

PROPOSED AMENDMENT

Sixty-ninth
Legislative Assembly
of North Dakota

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.

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
21 number, electronic mail address, program identification number, or any other unique
22 identifying number, characteristic, or code, and any demographic information collected
23 about the individual.

24

- 1 4. "Investigation counsel" means the guardianship and conservatorship counsel.
2 5. "Licensed conservator" means a person licensed by the office to provide
3 conservatorship services.
4 6. "Licensed guardian" means a person licensed by the office to provide guardianship
5 services.
6 7. "Office" means the office of guardianship and conservatorship.
7 8. "Public conservator" means a conservator under contract with the office to provide
8 conservatorship services for an individual eligible for public services.
9 9. "Public guardian" means a guardian under contract with the office to provide
10 guardianship services for an individual eligible for public services.
11 10. "Public services" means state or federally funded programs available to eligible
12 individuals.
13 11. "Unlicensed conservator" means a person providing conservatorship services without
14 a conservator license.
15 12. "Unlicensed guardian" means a person providing guardianship services without a
16 guardian license.

17 **27-27.1-02. Office of guardianship and conservatorship - Purpose - Powers and**
18 **duties - Report - Audit.**

- 19 1. The office of guardianship and conservatorship is created as a division under the
20 supreme court to administer the programs assigned by state law or the supreme court.
21 2. The office shall:
22 a. Develop policies and procedures, including eligibility criteria, for:
23 (1) Receiving public services;
24 (2) A public guardian or a public conservator;
25 (3) A licensed guardian or a licensed conservator; and
26 (4) Distribution of funding for direct payments and expense reimbursements for
27 public services.
28 b. Develop ethical standards for:
29 (1) A licensed guardian or a licensed conservator; and
30 (2) An unlicensed guardian or an unlicensed conservator.
31 c. Develop policies and procedures for proceedings when a guardian or a
32 conservator is unable to fulfill the duties of a guardian or a conservator.

- 1 d. Keep accurate records of all financial transactions performed under this chapter
2 in the manner required by the office of management and budget.
- 3 e. Provide a report each biennium to the legislative management regarding the
4 operations of the office, including the cost of public guardians and public
5 conservators, and any other information requested by the legislative
6 management.
- 7 3. The office may:
- 8 a. Recommend rules applicable to a licensed guardian or a licensed conservator.
- 9 b. Grant licenses to a guardian or conservator and agency permits, including
10 revoking or suspending an agency permit.
- 11 c. Require insurance or bond coverage for a licensed guardian or a licensed
12 conservator as a condition for licensure.
- 13 d. Establish mandatory disclosure and reporting requirements for a licensed
14 guardian or a licensed conservator, including a process to disclose information or
15 submit reports to the office.
- 16 e. Provide training for guardians and conservators.
- 17 f. Monitor guardianship and conservatorship services.
- 18 g. Provide annual reports to the supreme court.
- 19 h. Distribute funding for direct payments, expense reimbursements, or other public
20 services, including funding for public administrators.
- 21 i. Establish and collect fees to support guardianship and conservatorship services
22 and the duties of the office, which must be deposited in the guardianship and
23 conservatorship support fund.
- 24 j. Seek and apply for private, federal, or other funds to help support guardians and
25 conservators and to safeguard the rights of individuals who receive public
26 services.
- 27 k. Accept private funds for deposit in the guardianship and conservatorship support
28 fund.
- 29 4. The office may not authorize payment for services for any public guardian or public
30 conservator that provides services for more individuals than allowed through statute,
31 regulation, court rule, or policy adopted by the office.

1 5. 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 6. The office is subject to audits by the state auditor under chapter 54-10.

6 **27-27.1-03. 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 judicial
12 branch to defray the expenses of the office for supporting guardianship and conservatorship
13 services, including guardianship and conservatorship training and monitoring.

14 **27-27.1-04. 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 or procedure 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. Investigation counsel may disclose information uncovered during a disciplinary
- 7 investigation to the attorney general or bureau of criminal investigation when
- 8 investigation counsel suspects the subject of the investigation has committed a crime.
- 9 4. A person that discloses, authorizes, or knowingly allows, participates in, or acquiesces
- 10 in the disclosure of confidential information in violation of this section is guilty of a
- 11 class C felony.

12 **27-27.1-05. Guardianship and conservatorship limitations - Representation to the**

13 **public - Exemption.**

- 14 1. A person may not serve as a guardian or a conservator for three or more adult
- 15 individuals at the same time unless that person is a licensed guardian or a licensed
- 16 conservator.
- 17 2. A public guardian or a public conservator may not provide services to a minor unless
- 18 authorized by a proceeding under section 30.1-28-03.3.
- 19 3. A person may represent to the public that the person is licensed to provide public
- 20 services only if the person is a licensed guardian or a licensed conservator.
- 21 4. This section does not apply to:
- 22 a. A federal or state agency; or
- 23 b. A financial institution under section 6-08.1-01 when appointed as a conservator.
- 24 5. A person who violates this section after August 1, 2026, is guilty of a class B
- 25 misdemeanor.

26 **27-27.1-06. Immunity.**

27 A person who in good faith provides information or testimony regarding a guardian's or

28 conservator's misconduct or lack of professionalism is not subject to civil liability.

29 **27-27.1-07. Jurisdiction - Waiver of court costs - Applicability.**

- 30 1. The supreme court has original jurisdiction to revoke or suspend a guardian or a
- 31 conservator license.
- 32 2. The district court has original jurisdiction over licensure denial appeals.

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

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

7 **27-27.1-08. Guardianship and conservatorship review board - Guardianship and**
8 **conservatorship counsel.**

9 1. The supreme court may establish a guardianship and conservatorship review board to
10 conduct disciplinary proceedings for a guardian or conservator.

11 2. The supreme court may appoint a guardianship and conservatorship counsel to
12 investigate noncompliance reported under this chapter.

13 **27-27.1-09. Supreme court - Discretionary powers.**

14 The supreme court may:

15 1. Grant immunity to a member of the board and the board's agents if a district court or
16 the supreme court would have immunity in performing the same functions.

17 2. Establish confidentiality and disclosure standards for disciplinary proceedings.

18 3. Authorize officials, officers, agents, and designees of the office, the board, and the
19 investigation counsel to:

20 a. Administer oaths.

21 b. Order and otherwise provide for the inspection of books and records.

22 c. Issue subpoenas for the attendance of witnesses and the production of
23 designated documents, electronically stored information, or tangible things in
24 accordance with the North Dakota Rules of Civil Procedure.

25 d. Order the deposition of a person residing within or outside the state to be taken in
26 accordance with the North Dakota Rules of Civil Procedure.

27 4. Adopt rules to effectuate the powers and duties under this chapter.

28 **27-27.1-10. Attorney general – Counsel - Bureau of criminal investigation - Primary**
29 **authority for investigations.**

30 1. The attorney general shall act as legal counsel in any particular investigation or
31 proceeding under section 54 12 02. The attorney general shall appear and defend any
32 officer or employee of the office and any member of the board in any action founded

1 on an act or omission arising out of performance of an official duty consistent with
2 section 54 12 01.3.

3 2. Pursuant to chapter 54-12, the attorney general and bureau of criminal investigation
4 have primary authority to investigate criminal cases related to a guardianship or
5 conservatorship.

6 **27-27.1-11. Duty to disclose and cooperate.**

7 1. A state and local governmental entity and its officers and employees, and the officials,
8 officers, and employees of the courts of this state shall disclose records and
9 information requested by the board or investigation counsel or any authorized
10 representative of the board or investigation counsel and shall cooperate with and give
11 reasonable assistance to the board or investigation counsel and any authorized
12 representative of the board or counsel unless prohibited by federal regulation or law.

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

17 **27-27.1-12. Duties of witnesses - Penalty.**

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

20 2. If a person refuses to attend, testify, or produce any writings or things required by
21 subpoena, the office, board, or investigation counsel that issued the subpoena may
22 petition the district court ~~overseeing the guardianship or conservatorship proceeding at~~
23 issue of the district in which the attendance or production is required for an order
24 compelling a person to attend and testify or produce the writings or things required by
25 the subpoena. The court shall order a person to appear before the court at a specified
26 time and place to show cause why the person has not attended, testified, or produced
27 the writings or things as required. A copy of the order must be served on the person. If
28 the court determines the subpoena was regularly issued, the court shall order a
29 person to appear at the time and place fixed in the order and testify or produce the
30 required writings or things.

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

1 **27-27.1-13. Preferred claim.**

- 2 1. The office has a preferred claim against the estate of an individual or an individual's
3 spouse for recovery of funds expended under this chapter for the care of that
4 individual or the individual's spouse. All funds recovered under this chapter must be
5 deposited in the general fund.
- 6 2. A claim may not be required to be paid and interest may not begin to accrue during the
7 lifetime of the decedent's surviving spouse, if any.
- 8 3. A statute of limitation or similar statute or the doctrine of laches may not bar a claim
9 under this chapter.

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

12 The court may order a guardian to be listed on a registry if the court removed the
13 guardian for good cause. A guardian listed on the registry is disqualified from acting as
14 a guardian in any guardianship proceeding. The court shall send a copy of the order to
15 the state court administrator, who shall maintain and administer the registry. This
16 subsection is inapplicable to licensed guardians. For purposes of this subsection, a
17 licensed guardian includes a guardian whose license has been suspended but
18 excludes a guardian whose license is revoked.

Clarification
on why ~~and~~ ~~and~~

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

21 **30.1-29-15. (5-415) Death, resignation, or removal of conservator.**

- 22 1. The court may remove a conservator for good cause, upon notice and hearing, or
23 accept the resignation of a conservator. After a conservator's death, resignation, or
24 removal, the court may appoint another conservator. A conservator so appointed
25 succeeds to the title and powers of the predecessor.
- 26 2. The court may order a conservator to be listed on a registry if the court removed the
27 conservator for good cause. A conservator listed on the registry is disqualified from
28 acting as a conservator in any conservatorship proceeding. The court shall send a
29 copy of the order to the state court administrator, who shall maintain and administer
30 the registry. This subsection is inapplicable to licensed conservators. For purposes of
31 this subsection, a licensed conservator includes a conservator whose license has
32 been suspended but excludes a conservator whose license is revoked.

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

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

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

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

26 **SECTION 6. APPROPRIATION – ONE-TIME FUNDING – JUDICIAL BRANCH - OFFICE**
27 **OF GUARDIANSHIP AND CONSERVATORSHIP.**

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

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1	Salaries and wage – agents	\$960,000
2	Operating expenses – agents	322,000
3	Establishment costs - indigents	1,550,000
4	Establishment costs - developmentally disabled	1,296,400
5	Public guardian and conservator fees - indigents	8,638,020
6	Guardianship contracts - developmentally disabled	<u>6,835,136</u>
7	Total general fund	\$18,319,556

8 Full-time equivalent positions 4

9 2. The following amounts reflect the 2025-27 biennium one time funding items included in
10 the appropriation under subsection 1, which are not part of the entity's base budget for
11 the 2027-29 biennium:

12	Agent equipment	\$322,000
13	Total general fund	<u>\$322,000</u>

14 3. The judicial branch shall report to the appropriations committees of the seventieth
15 legislative assembly on the use of the one-time funding under subsection 2.