

**SECOND ENGROSSMENT
with House 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 of the North Dakota
6 Century Code, relating to the task force on guardianship monitoring; to provide a penalty; to
7 provide for a report; to provide an appropriation; and to provide a continuing appropriation.

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

9 **SECTION 1.** A new subsection to section 30.1-28-07 of the North Dakota Century Code is
10 created and enacted as follows:

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

18 **SECTION 2. AMENDMENT.** Section 30.1-29-15 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **30.1-29-15. (5-415) Death, resignation, or removal of conservator.**

21 1. The court may remove a conservator for good cause, upon notice and hearing, or
22 accept the resignation of a conservator. After a conservator's death, resignation, or

1 removal, the court may appoint another conservator. A conservator so appointed
2 succeeds to the title and powers of the predecessor.

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

10 **SECTION 3. AMENDMENT.** Subsection 1 of section 50-24.1-07 of the North Dakota
11 Century Code is amended and reenacted as follows:

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

- 23 a. Recipient liability expense applicable to the month of death for nursing home or
24 basic care services;
- 25 b. Funeral expenses not in excess of three thousand five hundred dollars;
- 26 c. Expenses of the last illness, other than those incurred by medical assistance;
- 27 d. Expenses of administering the estate, including attorney's fees approved by the
28 court;
- 29 e. Claims made under chapter 50-01;
- 30 f. Claims made under chapter 50-24.5;
- 31 g. Claims made under chapter 50-06.3 and on behalf of the state hospital; ~~and~~

1 h. Claims made under chapter 54-68; and

2 i. Claims made under subsection 4.

3 **SECTION 4.** Chapter 54-68 of the North Dakota Century Code is created and enacted as
4 follows:

5 **54-68-01. Definitions.**

6 As used in this chapter:

7 1. "Agency permit" means temporary authorization given by the office to an employee of
8 a professional guardianship or professional conservatorship entity which allows the
9 permitholder to provide guardianship or conservatorship services as an agent of the
10 entity.

11 2. "Identifiable information" means an individual's personal details, including the
12 individual's name, address, telephone number, facsimile number, social security
13 number, electronic mail address, program identification number, or any other unique
14 identifying number, characteristic, or code, and any demographic information collected
15 about the individual.

16 3. "Investigation counsel" means the guardianship and conservatorship counsel.

17 4. "Licensed conservator" means a person licensed by the office to provide
18 conservatorship services.

19 5. "Licensed guardian" means a person licensed by the office to provide guardianship
20 services.

21 6. "Office" means the office of guardianship and conservatorship.

22 7. "Public conservator" means a conservator under contract with the office to provide
23 conservatorship services for an individual eligible for public services.

24 8. "Public guardian" means a guardian under contract with the office to provide
25 guardianship services for an individual eligible for public services.

26 9. "Public services" means state or federally funded programs administered by the office
27 available to eligible individuals.

28 10. "Review board" means the guardianship and conservatorship review board
29 established under section 54-68-03.

30 11. "Unlicensed conservator" means a person providing conservatorship services without
31 a conservator license.

1 12. "Unlicensed guardian" means a person providing guardianship services without a
2 guardian license.

3 **54-68-02. Office of guardianship and conservatorship - Purpose - Powers and duties -**
4 **Report - Audit.**

5 1. The office of guardianship and conservatorship, in its capacity of supervising and
6 directing guardianship and conservatorship, shall operate independently of any state
7 agency that provides services to individuals under guardianship or conservatorship.
8 The office shall administer programs assigned by state law.

9 2. The office shall:

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

11 (1) Receiving public services;

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

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

14 (4) Distribution of funding for direct payments and expense reimbursements for
15 public services.

16 b. Develop ethical standards for:

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

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

19 c. Develop policies and procedures for proceedings when a guardian or a
20 conservator is unable to fulfill the duties of a guardian or a conservator.

21 d. Keep accurate records of all financial transactions performed under this chapter
22 in the manner required by the office of management and budget.

23 e. Provide a report each biennium to the legislative management regarding the
24 operations of the office, including the cost of public guardians and public
25 conservators, and any other information requested by the legislative
26 management.

27 3. The office may:

28 a. Recommend rules applicable to a licensed guardian or a licensed conservator.

29 b. Grant licenses to a guardian or conservator and agency permits, including
30 revoking or suspending an agency permit.

- 1 c. Require insurance or bond coverage for a licensed guardian or a licensed
2 conservator as a condition for licensure.
- 3 d. Establish mandatory disclosure and reporting requirements for a licensed
4 guardian or a licensed conservator, including a process to disclose information or
5 submit reports to the office.
- 6 e. Provide training for guardians and conservators.
- 7 f. Monitor guardianship and conservatorship services.
- 8 g. Provide annual reports to the governor.
- 9 h. Distribute funding for direct payments, expense reimbursements, or other public
10 services, including funding for public administrators.
- 11 i. Establish and collect fees to support guardianship and conservatorship services
12 and the duties of the office, which must be deposited in the guardianship and
13 conservatorship support fund.
- 14 j. Seek and apply for private, federal, or other funds to help support guardians and
15 conservators and to safeguard the rights of individuals who receive public
16 services.
- 17 k. Accept private funds for deposit in the guardianship and conservatorship support
18 fund.
- 19 4. The office may not authorize payment for services for any public guardian or public
20 conservator that provides services for more individuals than allowed through statute,
21 regulation, or administrative rule.
- 22 5. The office, its officers, or its employees, may not act as a public guardian or a public
23 conservator or act in any other representative capacity for any individual. This
24 subsection does not prohibit an officer or employee from acting as a guardian or
25 conservator in a personal capacity apart from any duties as an officer or employee.
- 26 6. The office is subject to audits by the state auditor under chapter 54-10.
- 27 **54-68-03. Review board - Director - Administrative authority - Operations committee.**
- 28 1. The office shall establish a guardianship and conservatorship review board to conduct
29 disciplinary proceedings for a guardian or conservator. The guardianship and
30 conservatorship review board shall consist of:

- 1 a. Three members representing guardians, appointed by the guardianship
- 2 association of North Dakota;
- 3 b. One member representing family guardians, appointed by the guardianship
- 4 association of North Dakota;
- 5 c. One member representing the protection and advocacy project, appointed by the
- 6 committee on protection and advocacy;
- 7 d. Two members appointed by the state bar association of North Dakota, consisting
- 8 of:
- 9 (1) One lawyer licensed to practice law in the state; and
- 10 (2) One retired judge, judicial referee, or surrogate judge; and
- 11 e. Two members of the public, appointed by the governor.
- 12 2. The review board shall appoint an office director, who serves at the will of the review
- 13 board. Within the limits of legislative appropriations, the director shall employ the
- 14 necessary staff to provide office services in accordance with this chapter. The director,
- 15 with the advice and consent of the review board, may adopt rules for administration of
- 16 the office.
- 17 3. The office may establish a guardianship and conservatorship counsel to investigate
- 18 noncompliance reported under this chapter. The director of the office is the hiring
- 19 authority for the investigation counsel.
- 20 4. The office must create a guardianship and conservatorship operations committee to
- 21 supervise the operations of the office and investigation counsel. The guardianship and
- 22 conservatorship operations committee must develop and submit budgets for the office,
- 23 review board, and investigation counsel.
- 24 a. The guardianship and conservatorship operations committee shall consist of:
- 25 (1) Two members of the legislative assembly, one from each chamber,
- 26 appointed by the chairman of the legislative management;
- 27 (2) Two members appointed by the state bar association of North Dakota,
- 28 consisting of:
- 29 (a) One lawyer licensed to practice law in the state; and
- 30 (b) One retired judge, judicial referee, or surrogate judge; and
- 31 (3) Two members appointed by the governor.

1 **b.** Initially, members of the guardianship and conservatorship operations committee
2 shall serve staggered terms as follows:

3 (1) Two members shall serve a term of one year;

4 (2) Two members shall serve a term of two years; and

5 (3) Two members shall serve a term of three years.

6 **c.** After the expiration of initial terms, all appointments must be for a term of three
7 years. A member may not serve more than two consecutive terms of three years.

8 **d.** A member of the guardianship and conservatorship operations committee
9 concurrently serving as a member of the legislative assembly shall receive
10 per diem compensation in accordance with section 54-35-10.

11 **54-68-04. 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 office to
17 defray the expenses of supporting guardianship and conservatorship services, including
18 guardianship and conservatorship training and monitoring.

19 **54-68-05. 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 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 **54-68-06. 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. Human service zones, including human service zone directors or human service
2 zone team members, as defined in section 50-01.1-01.

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

5 **54-68-07. Immunity.**

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

8 2. An employee of the office, a member of the review board, or an agent of the review
9 board acting in good faith is not subject to civil liability.

10 **54-68-08. Authority - Applicability.**

11 1. The office may revoke or suspend a guardian or a conservator license.

12 2. The office must establish by rule a process to appeal license denials and review board
13 orders.

14 3. Upon receipt of any report or complaint, the office shall assess the need for an
15 investigation of the report or complaint. For the purpose of investigating a report or
16 complaint:

17 a. The office or review board shall:

18 (1) Establish confidentiality and disclosure standards for investigating a report
19 or complaint and subsequent disciplinary proceedings.

20 (2) Adopt rules to effectuate the powers and duties under this chapter.

21 b. The office or review board may:

22 (1) Interview an alleged victim, witness, or any other individual with knowledge
23 of the situation.

24 (2) Access any record or information on an applicant, provider, or recipient of
25 public services.

26 (3) Issue subpoenas for the attendance of witnesses and the production of
27 designated documents, electronically stored information, or tangible things
28 in accordance with the North Dakota Rules of Civil Procedure.

29 (4) Order the deposition of a person residing within or outside the state to be
30 taken in accordance with the North Dakota Rules of Civil Procedure.

1 (5) Coordinate with other agencies and departments, including the attorney
2 general and bureau of criminal investigation.

3 3. 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 rule if the guardian or the conservator serves an adult ward,
6 adult protected person, or incapacitated person, as defined in title 30.1.

7 **54-68-09. Attorney general - Counsel - Bureau of criminal investigation - Primary**
8 **authority for investigations.**

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

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

16 **54-68-10. Duty to disclose and cooperate.**

17 1. A state and local governmental entity and its officers and employees, and the officials,
18 officers, and employees of the courts of this state shall disclose records and
19 information requested by the review board or investigation counsel or any authorized
20 representative of the review board or investigation counsel and shall cooperate with
21 and give reasonable assistance to the review board or investigation counsel and any
22 authorized representative of the review board or counsel unless prohibited by federal
23 regulation or law.

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

28 **54-68-11. Duties of witnesses - Penalty.**

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

Sixty-ninth
Legislative Assembly

1	Establishment costs - indigents	1,550,000
2	Establishment costs - developmentally disabled	1,096,400
3	Public guardian and conservator fees - indigents	7,100,000
4	Guardianship contracts - developmentally disabled	<u>5,500,000</u>
5	Total general fund	\$16,446,400
6	Full-time equivalent positions	4.00