

# Senate Judiciary Committee

SB 2291

## PROPOSED AMENDMENT

**Scott Bernstein**

**January 29, 2025**

Chairman Larson, members of the Senate Judiciary Committee, I am Scott Bernstein, Executive Director of Guardian and Protective Services and a member of the Task Force on Guardianship Monitoring and serve on the Guardianship Association of North Dakota board.

I stand here in Support of the changes enumerated. However, I offer for your consideration one amendment. The focus is on lines 27 and 28 on page 22 or in Section 14 30.1-28-12. (5-312).

The amendment would read:

**A guardian is not liable to a third person for acts of the person subject to guardianship solely by reason of the relationship. A guardian who exercises reasonable care in choosing a third person providing medical or other care, treatment, or service for the person subject to guardianship is not liable for injury to the person subject to guardianship resulting from the wrongful conduct of the third person or the wrongful conduct of the person subject to guardianship.**

This is an expansion on the proposed amendment of Section 14 30.1-28-12. (5-312) **General powers and duties of guardian**, as stated in SB 2291. Point 12 as listed in the existing bill is good. I believe the proposed amendment is better because it provides greater clarity. Frankly, this amendment is necessary to protect guardians from being sued. Presently, without this protection, a guardian can be held responsible for the acts of the person subject to guardianship in any relationship.

- If they shoplift at Wal Mart
- Damage an apartment
- Fight with someone and injure a person
- The list goes on...in other words, any person the individual subject to guardianship encounters becomes a potential litigant.

The other reality is guardians arrange and orchestrate a significant amount of medical care and services for the person subject to guardianship. Using licensed providers is no guarantee of perfect care.

The last wording 'unless the guardian is grossly negligent' is not necessary because the Century Code regarding guardianship provides ample opportunity to hold a guardian responsible for negligence.

I will be happy to answer any questions.