

Introduced by

Senators J. Lee, Hogan, Poolman

Representatives Beadle, Dockter

1 A BILL for an Act to create and enact chapter 50-25.3 of the North Dakota Century Code,
2 relating to family visitation rights.

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

4 **SECTION 1.** Chapter 50-25.3 of the North Dakota Century Code is created and enacted as
5 follows:

6 **50-25.3-01. Definitions.**

7 As used in this chapter:

- 8 1. "Caregiver" means a person that has assumed the legal responsibility or a contractual
9 obligation for the care of a vulnerable adult or has voluntarily assumed responsibility
10 for the care of a vulnerable adult. The term includes a facility operated by a public or
11 private agency, organization, or institution which provides services to, and has
12 assumed responsibility for the care of, a vulnerable adult.
- 13 2. "Family member" means an individual related by blood, marriage, or adoption to a
14 vulnerable adult.
- 15 3. "Friend" means an individual who is in a dating relationship with a vulnerable adult or
16 any other individual with whom a vulnerable adult has an established relationship.
- 17 4. "Substantial functional impairment" means, because of physical limitations, a
18 substantial incapability of living independently or providing self-care as determined
19 through observation, diagnosis, evaluation, or assessment.
- 20 5. "Substantial mental impairment" means a substantial disorder of thought, mood,
21 perception, orientation, or memory which grossly impairs judgment, behavior, or ability
22 to live independently or provide self-care as revealed by observation, diagnosis,
23 evaluation, or assessment.

1 6. "Vulnerable adult" means an adult who is at least sixty-five years of age or an adult
2 who has a substantial mental or functional impairment.

3 **50-25.3-02. Visitation of a vulnerable adult by family members or friends.**

4 A caregiver may not unreasonably or arbitrarily deny or restrict visitation to a family member
5 or friend or communication or interaction between a vulnerable adult and a family member or
6 friend.

7 **50-25.3-03. Petition for visitation.**

8 1. A family member or friend who has had visitation unreasonably or arbitrarily denied or
9 restricted by a caregiver may file with the district court located in the county wherein
10 the vulnerable adult resides a petition to compel visitation.

11 2. The petition must state:

12 a. The petitioner's relationship to the vulnerable adult;

13 b. Whether the caregiver is unreasonably or arbitrarily denying or restricting
14 visitation between the petitioner and the vulnerable adult; and

15 c. The facts supporting the petitioner's allegation that the caregiver is unreasonably
16 or arbitrarily denying or restricting visitation between the petitioner and the
17 vulnerable adult.

18 3. The court shall fix a time and place for hearing the petition. At least twenty days before
19 the date of hearing, the petitioner shall provide to the caregiver notice of the filing of
20 the petition and of the time and place of hearing.

21 4. The court may not issue an order compelling visitation if the court finds:

22 a. The vulnerable adult, while having the capacity to evaluate and communicate
23 decisions regarding visitation, expresses a desire to not have visitation with the
24 petitioner; or

25 b. Visitation between the petitioner and the vulnerable adult is not in the best
26 interest of the vulnerable adult.

27 5. If the court grants the petition for visitation, the court may impose reasonable
28 restrictions on visitation between the petitioner and the vulnerable adult. The petitioner
29 is responsible for paying costs associated with the visitation, including transportation
30 and supervision costs. Visitation may not occur in a manner that negatively impacts

1 the medical or treatment needs of the vulnerable adult and must occur at the
2 placement location of the vulnerable adult.

3 6. The court shall impose the cost of filing the petition for visitation and reasonable
4 attorney's fees incurred by the petitioner on the caregiver, if the court finds during a
5 hearing under this section that:

6 a. The caregiver unreasonably or arbitrarily denied or restricted visitation to a family
7 member or friend; and

8 b. The caregiver denied or restricted visitation between the petitioner and the
9 vulnerable adult in bad faith.

10 7. The court may not impose costs or fees under subsection 6 on the vulnerable adult or
11 a caregiver that in good faith denied or restricted visitation to a family member or
12 friend. Costs, fees, or other sanctions imposed under subsection 6 may not be paid
13 from the vulnerable adult's finances or estate.

14 **50-25.3-04. Expedited hearing.**

15 If a petition for visitation states the vulnerable adult's health is in significant decline or the
16 vulnerable adult's death may be imminent, the court shall conduct an emergency hearing on the
17 petition as soon as practicable and no later than ten days after the date the petition is filed with
18 the court.