

SENATE BILL NO. 2072

Introduced by

Judiciary Committee

(At the request of the Supreme Court)

1 A BILL for an Act to amend and reenact sections 30.1-27-01, 30.1-27-02, 30.1-27-05,
2 30.1-27-06, 30.1-27-07, 30.1-27-08, 30.1-27-09, and 30.1-27-11 of the North Dakota Century
3 Code, relating to guardianship of minors; and to repeal sections 30.1-27-03, 30.1-27-04,
4 30.1-27-10, and 30.1-27-12 of the North Dakota Century Code, relating to guardianships of
5 minors.

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

7 **SECTION 1. AMENDMENT.** Section 30.1-27-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **30.1-27-01. (5-201) Status of guardian of minor - General.**

10 A person becomes a guardian of a minor under this chapter by acceptance of a
11 testamentary appointment ~~or upon appointment and approval~~ by the court. The guardianship
12 status continues until terminated, without regard to the location ~~from time to time~~ of the guardian
13 and minor ward.

14 **SECTION 2. AMENDMENT.** Section 30.1-27-02 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **30.1-27-02. (5-202) Testamentary appointment of guardian of minor.**

17 The parent of a minor may appoint by will a guardian of an unmarried minor. ~~Subject to the~~
18 ~~right of the minor under section 30.1-27-03, a~~ testamentary appointment becomes effective
19 upon filing the guardian's acceptance in the court in which the will is probated and remains
20 effective upon approval by the court either after or without a hearing, if, before acceptance, both
21 parents are dead or the surviving parent is ~~adjudged incapacitated~~ parent's rights have been
22 terminated by prior court order. If both parents are dead, an effective appointment by the parent
23 who died later has priority. This state recognizes a testamentary appointment effected by filing
24 the guardian's acceptance under a will probated in another state which is the testator's domicile

1 and upon approval by the court either after or without a hearing. Upon acceptance of
2 appointment, written notice of acceptance must be given by the guardian to the minor and to the
3 person having the minor's care or to the minor's nearest adult ~~relation~~relative under section
4 27-20-02. Within forty-five days of the filing of acceptance, the testamentary guardian must file
5 with the court a criminal history record check report and affidavit stating whether the proposed
6 guardian has been investigated for offenses related to theft, fraud, or the abuse, neglect, or
7 exploitation of an adult or child and shall provide a release authorizing access to any record
8 information maintained by an agency in this or another state or a federal agency.

9 **SECTION 3. AMENDMENT.** Section 30.1-27-05 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **30.1-27-05. (5-205) Court appointment of guardian of minor – Venue**Jurisdiction and
12 venue.

13 The venue for guardianship proceedings for a minor is in the place where the minor resides
14 or is present

- 15 1. The district court where the will is probated has exclusive jurisdiction over the following
16 procedures that are governed by this chapter:
 - 17 a. To approve the acceptance of a testamentary appointment of a guardian; and
 - 18 b. To transfer a case to juvenile court in the event of an objection to the
19 testamentary appointment under section 30.1-27-07.
- 20 2. The juvenile court under chapter 27-20.1 has exclusive original jurisdiction over
21 proceedings to consider objections to the testamentary appointment under
22 section 30.1-27-07 and over the court appointment of a guardian of a minor. Any
23 person interested in the welfare of a minor may petition the juvenile court for the
24 appointment of a guardian under section 27-20.1-05 in the following situations:
 - 25 a. If there is a living parent of the minor, known or unknown;
 - 26 b. If the testamentary guardian fails to accept appointment as guardian within sixty
27 days after the death of the minor's last living parent;
 - 28 c. If both parents are dead or the surviving parent's rights have been terminated by
29 prior court order, but there has been no appointment of a guardian for the minor
30 by will; or
 - 31 d. If a guardianship of a minor is sought for any other reason.

1 **SECTION 4. AMENDMENT.** Section 30.1-27-06 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **30.1-27-06. (5-206) Court appointment of guardian of minor ad litem - Qualifications --**
4 **~~Priority of minor's nominee~~Approval of acceptance of testamentary appointment.**

5 The court may appoint as guardian any person whose appointment would be in the best
6 interests of the minor. The court shall appoint a person nominated by the minor, if the minor is
7 fourteen years of age or older, unless the court finds the appointment contrary to the best
8 interests of the minor

9 1. Upon the filing of an acceptance of a testamentary appointment, the court shall
10 appoint an attorney promptly to act as guardian ad litem. The guardian ad litem fees
11 must be paid from the estate of the deceased parent, if available.

12 2. The duties of the guardian ad litem include:

13 a. Personally interviewing the minor, the testamentary guardian, and other persons
14 interested in the welfare of the minor;

15 b. Explaining the guardianship proceeding to the minor in the language, mode of
16 communication, and terms that the minor is most likely to understand, including
17 the nature and consequences of the proceeding, the rights to which the minor is
18 entitled, and the available legal options, including the right to retain an attorney to
19 represent the minor;

20 c. Advocating for the best interests of the minor consistent with section 14-09-06.2.
21 The appointed attorney serving as guardian ad litem may not represent the minor
22 in a legal capacity;

23 d. Consulting juvenile court and other agency records to determine whether the
24 testamentary guardian has a criminal history of abuse, neglect, exploitation, and
25 review of the criminal history records. The guardian ad litem may access to
26 confidential juvenile court records and other confidential agency records in the
27 exercise of the guardian ad litem's official duties;

28 e. Submitting a written report to the court within sixty days of the guardian ad litem's
29 appointment containing the guardian ad litem's findings on whether the
30 appointment of the testamentary guardian is in the best interests of the child;

- 1 f. Notifying the court if the minor objects to the appointment of the testamentary
2 guardian; and
- 3 g. If the guardian ad litem's report states the guardian ad litem believes the
4 appointment of the testamentary guardian is contrary to the best interests of the
5 minor, the case must be transferred to juvenile court.
- 6 3. The guardian ad litem shall serve a copy of the report on the minor if the minor is
7 fourteen years of age or older, the testamentary guardian, the person having the
8 minor's care or the minor's nearest adult relative under section 27-20-02, and the
9 personal representative of the deceased parent's estate.
- 10 4. After reviewing the guardian ad litem's report, the court may approve the acceptance
11 of the testamentary appointment without a hearing if no objection is raised by the
12 minor, the guardian ad litem, or any other person within fourteen days of the filing of
13 the report of the guardian ad litem.
- 14 5. The appointment of the guardian ad litem terminates immediately after the approval of
15 the acceptance or upon transfer of the case to juvenile court.
- 16 6. Upon the court's approval of the guardian's acceptance of the appointment, the court
17 shall issue letters of guardianship. The letters of guardianship must include:
- 18 a. The name, address, and telephone number of the guardian;
- 19 b. The full name of the minor;
- 20 c. Any limitations on the guardian's authority to make decisions on behalf of the
21 minor;
- 22 d. The expiration date of the appointment; and
- 23 e. The date by which the guardian must file the annual report required under
24 27-20.1-15.
- 25 7. A written report prepared and submitted under this section is closed to the public and
26 is not open to inspection except by the court, parties to the proceeding or the parties'
27 counsel, other persons for those purposes as the court may order for good cause, and
28 others authorized by court rule.
- 29 8. Medical, psychological, or other treatment information protected by federal law or
30 regulation and any financial account numbers related to a child are confidential and
31 may not be disclosed except to parties to the proceeding, their counsel, and others

1 authorized by court rule. The court may permit access by other persons for good
2 cause.

3 **SECTION 5. AMENDMENT.** Section 30.1-27-07 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **30.1-27-07. (5-207) CourtObjection to the appointment of the testamentary guardian**
6 **of minor - Procedure.**

7 1. ~~Notice of the time and place of hearing of a petition for the appointment of a guardian~~
8 ~~of a minor is to be given by the petitioner in the manner prescribed by section~~
9 ~~30.1-03-01 to:~~

10 a. ~~The minor, if the minor is fourteen or more years of age.~~

11 b. ~~The person who has had the principal care and custody of the minor during the~~
12 ~~sixty days preceding the date of the petition.~~

13 e. ~~Any living parent of the minor.~~

14 2. ~~Upon hearing, if the court finds that a qualified person seeks appointment, venue is~~
15 ~~proper, the required notices have been given, the requirements of section 30.1-27-04~~
16 ~~have been met, and the welfare and best interests of the minor will be served by the~~
17 ~~requested appointment, it shall make the appointment. In other cases, the court may~~
18 ~~dismiss the proceedings or make any other disposition of the matter that will best~~
19 ~~serve the interest of the minor.~~

20 3. ~~If necessary, the court may appoint a temporary guardian, with the status of an~~
21 ~~ordinary guardian of a minor, but the authority of a temporary guardian shall not last~~
22 ~~longer than six months.~~

23 4. ~~If, at any time in the proceeding, the court determines that the interests of the minor~~
24 ~~are or may be inadequately represented, it may appoint an attorney to represent the~~
25 ~~minor, giving consideration to the preference of the minor if the minor is fourteen years~~
26 ~~of age or older.~~

27 1. Any person interested in the welfare of a minor subject to a testamentary appointment
28 of a guardian, including the minor, may object to the appointment of the testamentary
29 guardian as contrary to the best interests of the minor within fourteen days of the filing
30 of the report of the guardian ad litem.

- 1 2. An objection must contain a statement alleging specific facts that demonstrate the
- 2 appointment of the testamentary guardian is contrary to the best interests of the minor.
- 3 3. Upon filing of the objection or on the court's own motion, the court immediately shall
- 4 transfer the case to the juvenile court in the county where the original probate matter
- 5 was filed.

6 **SECTION 6. AMENDMENT.** Section 30.1-27-08 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **30.1-27-08. (5-208) ~~Consent to service by acceptance~~Acceptance of appointment --**
9 **Notice.**

10 By accepting a testamentary ~~or court~~ appointment as guardian, a guardian submits
11 personally to the jurisdiction of the court in any proceeding relating to the guardianship that may
12 be instituted by any interested person. ~~Notice of any proceeding shall be delivered to the~~
13 ~~guardian or mailed to the guardian by ordinary mail at the guardian's address as listed in the~~
14 ~~court records and to the guardian's address as then known to the petitioner. Letters of~~
15 ~~guardianship must indicate whether the guardian was appointed by will or by court order.~~

16 **SECTION 7. AMENDMENT.** Section 30.1-27-09 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **30.1-27-09. (5-209) Powers and duties of guardian of minor.**

19 A guardian of a minor has the powers and responsibilities of a parent who has not been
20 deprived of custody of the parent's minor and unemancipated child, except that a guardian is
21 not legally obligated to provide from the guardian's own funds for the ward and is not liable to
22 third persons by reason of the parental relationship for acts of the ward. In particular, and
23 without qualifying the foregoing, a guardian has the following powers and duties:

- 24 1. ~~The guardian must take reasonable care of the ward's personal effects and~~
25 ~~commence protective proceedings if necessary to protect other property of the ward.~~
- 26 2. ~~The guardian may receive money payable for the support of the ward to the ward's~~
27 ~~parent, guardian, or custodian under the terms of any statutory benefit or insurance~~
28 ~~system or any private contract, devise, trust, conservatorship, or custodianship. The~~
29 ~~guardian also may receive money or property of the ward paid or delivered by virtue of~~
30 ~~section 30.1-26-03. Any sums so received shall be applied to the ward's current needs~~
31 ~~for support, care, and education. The guardian must exercise due care to conserve~~

1 ~~any excess for the ward's future needs unless a conservator has been appointed for~~
2 ~~the estate of the ward, in which case excess shall be paid over at least annually to the~~
3 ~~conservator. Sums so received by the guardian are not to be used for compensation~~
4 ~~for the guardian's services except as approved by order of court or as determined by a~~
5 ~~duly appointed conservator other than the guardian. A guardian may institute~~
6 ~~proceedings to compel the performance by any person of a duty to support the ward or~~
7 ~~to pay sums for the welfare of the ward.~~

8 3. ~~The guardian is empowered to facilitate the ward's education, social, or other activities~~
9 ~~and to authorize medical or other professional care, treatment, or advice. A guardian is~~
10 ~~not liable by reason of this consent for injury to the ward resulting from the negligence~~
11 ~~or acts of third persons unless it would have been illegal for a parent to have~~
12 ~~consented. A guardian may consent to the marriage or adoption of the ward.~~

13 4. ~~A guardian shall file an annual report with the court informing the court of the status or~~
14 ~~condition of the ward and provide a copy of the report to the ward. The report must~~
15 ~~include changes that have occurred since the previous reporting period and an~~
16 ~~accounting of the ward's estate. The guardian shall report whether the ward has~~
17 ~~resided in an institution, whether the ward continues to require guardianship, and~~
18 ~~whether any powers of the guardian should be increased or limited. The filing of a~~
19 ~~report and its acceptance by the court or clerk of district court does not constitute an~~
20 ~~adjudication or a determination of the merits of the report nor does the filing of the~~
21 ~~report constitute the court's approval of the report. The court may approve a report~~
22 ~~and allow and settle an accounting only upon notice to the ward's guardian ad litem~~
23 ~~and other interested persons who have made an appearance or requested notice of~~
24 ~~proceedings. The office of state court administrator shall provide printed forms that~~
25 ~~may be used to fulfill reporting requirements. Any report must be similar in substance~~
26 ~~to the state court administrator's form. The forms must be available in the office of~~
27 ~~clerk of district court or obtainable through the supreme court's internet website~~

28 The powers and duties of a guardian of a minor under this chapter are defined under
29 section 27-20.1-15.

30 **SECTION 8. AMENDMENT.** Section 30.1-27-11 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **30.1-27-11. (5-211) Proceedings subsequent to appointment approval or findings -**
2 **Venue Transfer to juvenile court.**

- 3 1. ~~The court where the ward resides has concurrent jurisdiction with the court which~~
4 ~~appointed the guardian, or in which acceptance of a testamentary appointment was~~
5 ~~filed, over resignation, removal, accounting, and other proceedings relating to the~~
6 ~~guardianship~~Upon approval of the guardian's acceptance of the appointment of the
7 guardian of a minor and issuance of the letters of guardianship, the court shall transfer
8 the guardianship file to the juvenile court where the minor resides.
- 9 2. ~~If the court located where the ward resides is not the court in which acceptance of~~
10 ~~appointment is filed, the court in which proceedings subsequent to appointment are~~
11 ~~commenced shall in all appropriate cases notify the other court, in this or another~~
12 ~~state, and after consultation with that court determine whether to retain jurisdiction or~~
13 ~~transfer the proceedings to the other court, whichever is in the best interest of the~~
14 ~~ward. A copy of any order accepting a resignation or removing a guardian shall be sent~~
15 ~~to the court in which acceptance of appointment is filed~~The juvenile court under
16 section 27-20.1-02 has exclusive jurisdiction for any filings or proceedings subsequent
17 to approval and issuance of the letters of guardianship.

18 **SECTION 9. REPEAL.** Sections 30.1-27-03, 30.1-27-04, 30.1-27-10, and 30.1-27-12 of the
19 North Dakota Century Code are repealed.