

**2023 SENATE JUDICIARY**

**SB 2222**

# 2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Peace Garden Room, State Capitol

**SB 2222**  
1/24/2023

A BILL for an Act relating to emergency conservators; relating to a conservatorship.
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**8:59 AM Madam Chair** called the hearing to order.

**Madam Chair Larson, Senators Myrdal, Luick, Estenson, Braunberger,**

**Sickler and Paulson present.**

**Discussion Topics:**

- Work groups
- Guardianship
- Conservatorship
- Amendments
- Benefits
- Protected persons.
- Reasonable compensation
- Additional sales
- Additional persons
- Annual reports
- Final reports
- Emergency guardianship
- Minors and Adults

**9:00 AM Senator Dwyer** introduced **SB 2222**

**9:02 AM Cynthia Feland, Guardianship Workgroup Chair- South Central District Judge.** Oral testimony and written. #15616 #16259

**9:31 AM Madam Chair Larson** closed the hearing on **SB 2222**

*Patricia Wilkens, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Peace Garden Room, State Capitol

**SB 2222**  
1/24/2023

A BILL for an Act relating to emergency conservators; relating to a conservatorship.

10:23 **Madam Chair Larson** called the meeting to order.

**Madam Chair Larson, Senators, Paulson, Sickler, Braunberger, Estenson, Luick, Myrdal** are present.

## Discussion topics:

- Committee Action

10:23 AM **Senator Luick** moved a **DO PASS** on SB 2222.

10:24 AM **Senator Myrdal** seconded the motion.

10:24 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 7-0-0.

**Senator Sickler** will carry SB 2222.

This bill does not affect workforce development.

10:24 AM **Madam Chair Larson** closed the meeting.

*Patricia Lahr on behalf of Patricia Wilkens, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2222: Judiciary Committee (Sen. Larson, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2222 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

**2023 HOUSE JUDICIARY**

**SB 2222**

# 2023 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Room JW327B, State Capitol

SB 2222  
3/15/2023

Relating to a conservatorship.

9:00 AM Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter. Absent: S. Olson

## **Discussion Topics:**

- Protected person's real property.
- Conservatorship procedure clarification.

Senator Dwyer: Introduced the bill, No written testimony.

Cynthia Feland, District Court Judge, South Central Judicial District, Chair of the Guardianship Workgroup: Testimony #24524

The hearing closed at 9:31 AM.

Delores Shimek, Committee Clerk

# 2023 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Room JW327B, State Capitol

SB 2222  
3/15/2023

Relating to a conservatorship.

10:47 AM Chairman Klemin opened the meeting. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. Rios, Rep. S. Roers Jones, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter. Absent: Rep. S. Olson. Absent: Rep. Satrom

## Discussion Topics:

- Committee action.

Rep. Schneider moved a Do Pass;  
Seconded by Rep. Bahl

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	N
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	A
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll Call Vote: 11 Yes 1 No 1 Absent Motion carried.

Carrier: Vice Chairman Karls

The meeting closed at 10:54 AM.

DeLores Shimek, Committee Clerk

**REPORT OF STANDING COMMITTEE**

**SB 2222: Judiciary Committee (Rep. Klemin, Chairman)** recommends **DO PASS** (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2222 was placed on the Fourteenth order on the calendar.



**TESTIMONY**

**SB 2222**

23.0620.01000

Sixty-eighth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2222**

Introduced by

Senators Dwyer, Lee, Sickler

Representatives Klemin, Nelson, Schneider

1 A BILL for an Act to create and enact a new section to chapter 30.1-29 of the North Dakota  
2 Century Code, relating to emergency conservators; to amend and reenact section 30.1-03-02,  
3 subsection 1 of section 30.1-29-05, sections 30.1-29-07 and 30.1-29-08, subsection 1 of section  
4 30.1-29-09, and sections 30.1-29-18, 30.1-29-19, 30.1-29-22, 30.1-29-24, and 30.1-29-25 of the  
5 North Dakota Century Code, relating to a conservatorship.

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

7 **SECTION 1. AMENDMENT.** Section 30.1-03-02 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **30.1-03-02. (1-402) Notice - Waiver.**

10 A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by  
11 a writing signed by the person or the person's attorney and filed in the proceeding. A ward or  
12 protected person, for whom a guardianship, conservatorship, or other protective order is sought  
13 may not waive notice.

14 **SECTION 2. AMENDMENT.** Subsection 1 of section 30.1-29-05 of the North Dakota  
15 Century Code is amended and reenacted as follows:

- 16 1. On a petition for appointment of a conservator or other protective order, the petitioning  
17 party shall cause notice of the proceeding to be served personally on the person to be  
18 protected and the spouse of the person to be protected or, if none, the parents of the  
19 person to be protected, must be served personally by the petitioning party with notice-  
20 of the proceeding or any guardian or conservator, at least fourteen days before the  
21 date of hearing if they can be found within the state, or, if they cannot be found within  
22 the state, they, any other guardian or conservator, and, if none of these parties can be  
23 found, any government agency paying benefits to the person sought to be protected, if  
24 the person seeking the appointment has knowledge of the existence of these benefits,

1            must be given notice in accordance with section 30.1-03-01. ~~Waiver by the person to-~~  
2            ~~be protected is not effective unless the proceedings are limited to payment of~~  
3            ~~veterans' administration benefits, the person to be protected attends the hearing, or,~~  
4            ~~unless minority is the reason for the proceeding, waiver is confirmed in an interview~~  
5            ~~with the visitor.~~

6            **SECTION 3. AMENDMENT.** Section 30.1-29-07 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8            **30.1-29-07. (5-407) Procedure concerning hearing and order on original petition.**

- 9            1. Upon receipt of a petition for appointment of a conservator or other protective order  
10           because of minority, the court shall set a date for hearing on the matters alleged in the  
11           petition. The proposed conservator, if any, shall attend the hearing unless excused by  
12           the court for good cause. If, at any time in the proceeding, the court determines that  
13           the interests of the minor are or may be inadequately represented, it may appoint an  
14           attorney to serve as guardian ad litem for the minor, giving consideration to the choice  
15           of the minor if fourteen years of age or older. The duties of a guardian ad litem include:
- 16           a. Meeting, interviewing, and consulting with the person to be protected regarding  
17           the conservatorship proceeding, including explaining the purpose for the  
18           interview in the language, mode of communication, and terms the person is most  
19           likely to understand, the nature and possible consequences of the proceeding,  
20           the rights to which the person is entitled, and the legal options available,  
21           including the right to retain an attorney to represent the person;
  - 22           b. Advocating for the best interests of the person to be protected. The appointed  
23           attorney serving as guardian ad litem may not represent the person in a legal  
24           capacity;
  - 25           c. Ascertaining the views of the person to be protected concerning the proposed  
26           conservator, the powers and duties of the proposed conservator, the proposed  
27           conservatorship, and the scope and duration of the conservatorship;
  - 28           d. Interviewing the person seeking appointment as conservator;
  - 29           e. Obtaining any other relevant information;

- 1           f. Submitting a written report to the court containing the guardian ad litem's  
2           response to the petition and an assessment of the protected person's ability to  
3           attend the hearing either in person or by remote means; and
- 4           g. Attending the hearing unless excused by the court for good cause.
- 5        2. Upon receipt of a petition for appointment of a conservator or other protective order for  
6        reasons other than minority, the court shall set a date for hearing. The proposed  
7        conservator, if any, shall attend the hearing unless excused by the court for good  
8        cause. If, at any time in the proceeding, the court determines that the interests of the  
9        person to be protected are or may be inadequately represented, the court shall  
10       appoint an attorney to serve as guardian ad litem for the person to be protected. The  
11       duties of a guardian ad litem include:
- 12       a. Meeting, interviewing, and consulting with the person to be protected regarding  
13       the conservatorship proceeding, including explaining the purpose for the  
14       interview in the language, mode of communication, and terms the person is most  
15       likely to understand, the nature and possible consequences of the proceeding,  
16       the rights to which the person is entitled, and the legal options available,  
17       including the right to retain an attorney to represent the person;
- 18       b. Advocating for the best interests of the person to be protected. The appointed  
19       attorney serving as guardian ad litem may not represent the person in a legal  
20       capacity;
- 21       c. Ascertaining the views of the person to be protected concerning the proposed  
22       conservator, the powers and duties of the proposed conservator, the proposed  
23       conservatorship, and the scope and duration of the conservatorship;
- 24       d. Interviewing the person seeking appointment as conservator;
- 25       e. Obtaining any other relevant information;
- 26       f. Submitting a written report to the court containing the guardian ad litem's  
27       response to the petition and an assessment of the protected person's ability to  
28       attend the hearing either in person or by remote means; and
- 29       g. Attending the hearing unless excused by the court for good cause.
- 30       3. If the petition seeks appointment of a conservator or other protective order for reasons  
31       other than minority and the alleged disability is mental illness, mental deficiency,

1 physical illness or disability, chronic use of drugs, or chronic intoxication, the court  
2 shall direct the person to be protected be examined by an expert examiner designated  
3 by the court. The expert examiner preferably should be someone who is not  
4 connected with any institution in which the person is a patient or is detained.

5 a. An expert examiner appointed under this subsection shall examine the person to  
6 be protected and submit a written report to the court. The report must contain:

7 (1) A description of the nature and degree of any current disability, including the  
8 medical or ~~psychological~~psychological history, if reasonably available;

9 (2) A medical prognosis or psychological evaluation specifying the estimated  
10 severity and duration of any current disability;

11 (3) A statement about how or in what manner any underlying condition of  
12 physical or mental health affects the ability of the person to be protected to  
13 provide for personal needs; and

14 (4) A statement about whether any current medication ~~affects~~or physical or  
15 mental conditions affect the demeanor of the person to be protected or the  
16 ability of the person to attend and participate fully in any court proceeding or  
17 in any other procedure required by the court or by court rule.

18 b. ~~In determining whether appointment of a conservator is appropriate, the court~~  
19 ~~shall consider the reports ordered by the court under this subsection from a~~  
20 ~~guardian ad litem and an expert examiner.~~ The court, guardian ad litem,  
21 petitioner, or person to be protected may subpoena the expert examiner who  
22 prepared and submitted the report to appear, testify, and be cross-examined.

23 4. The person to be protected must be present at the hearing in person or by remote  
24 means, unless good cause is shown for the absence. Good cause does not consist of  
25 the physical difficulty of the person to be protected to attend the hearing. The court  
26 shall take all necessary steps to make the courts and court proceedings accessible  
27 and understandable to impaired persons. The court may convene temporarily, or for  
28 the entire proceeding, at any other location if it is in the best interest of the person to  
29 be protected.

30 5. In determining whether appointment of a conservator is appropriate, the court shall  
31 consider the reports ordered by the court under this section from a guardian ad litem

1           and an expert examiner. In any case in which the veterans' administration is or may be  
2           an interested party, a certificate of an authorized official of the veterans' administration  
3           that the person to be protected has been found incapable of handling ~~the~~their benefits  
4           payable on examination in accordance with the laws and regulations governing the  
5           veterans' administration is prima facie evidence of the necessity for a conservator or  
6           other protective order.

7           6. After hearing, upon finding that the appointment of a conservator or other protective  
8           order is appropriate, the court shall make an appointment or other appropriate  
9           protective order. After the hearing, the guardian ad litem must be discharged of the  
10          duties as guardian ad litem.

11          7. If the court approves a conservator, that person may receive reasonable  
12          compensation and reimbursement from the protected person's estate if the  
13          compensation and reimbursement will not unreasonably jeopardize the protected  
14          person's well-being and estate. The court shall consider the following factors when  
15          determining what constitutes reasonable compensation and reimbursement:

16          a. The size and nature of the protected person's estate;

17          b. The benefit to the protected person, or the protected person's estate, of the  
18          conservator's services;

19          c. The necessity for the services performed;

20          d. The protected person's anticipated future needs and income;

21          e. The time spent by the conservator in the performance of the services;

22          f. Whether the services were routine or required more than ordinary skill or  
23          judgment;

24          g. Any unusual skill, expertise, or experience brought to the performance of the  
25          services;

26          h. The conservator's estimate of the value of the services performed;

27          i. The fee customarily charged in the community for similar services;

28          j. The nature and length of the relationship with the protected person;

29          k. The experience, reputation, diligence, and ability of the person performing the  
30          service;

31          l. Any conflict of interest the conservator may have; and

1           m. Whether the appointment as conservator precluded the conservator from other  
2           employment.

3           8. The court may determine the weight to be given to each factor under subsection 7, if  
4           any, and to any other factor the court considers relevant. A separate finding is not  
5           required for each factor, but the court's findings must contain sufficient specificity to  
6           show the factual basis for the court's determination.

7           9. The court shall approve compensation and reimbursement before payment to the  
8           conservator is made.

9           **SECTION 4. AMENDMENT.** Section 30.1-29-08 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11           **30.1-29-08. (5-408) Permissible court orders.**

12           1. The court shall exercise the authority conferred in this chapter consistent with the  
13           maximum self-reliance and independence of the protected person and make  
14           protective orders only to the extent necessitated by the protected person's actual  
15           mental and adaptive limitations and other conditions warranting the procedure.

16           2. The court has the following powers which may be exercised directly or through a  
17           conservator, subject to section 30.1-29-22, in respect to the estate and affairs of  
18           protected persons:

19           a. While a petition for appointment of a conservator or other protective order is  
20           pending and after preliminary hearing and without prior notice to others, the court  
21           has power to preserve and apply the property of the person to be protected as  
22           may be required for the benefit of the person to be protected or the benefit of the  
23           dependents of the person to be protected.

24           b. After hearing and upon determining that a basis for an appointment or other  
25           protective order exists with respect to a minor ~~without other disability~~, the court  
26           has all those powers over the estate and affairs of the minor which are or might  
27           be necessary for the best interests of the minor, the minor's family, and members  
28           of the minor's household.

29           c. After hearing and upon determining that appointment of a conservator or other  
30           protective order is appropriate with respect to a person for reasons other than  
31           minority, the court has, for the benefit of the person and members of the person's

1 household, all the powers over the person's estate and affairs which the person  
2 could exercise if present and not under disability, except the power to make a will.  
3 These powers include power to make gifts, to convey or release the person's  
4 contingent and expectant interests in property, including marital property rights  
5 and any right of survivorship incident to joint tenancy, to exercise or release the  
6 person's powers as trustee, personal representative, custodian for minors,  
7 conservator, or donee of a power of appointment, to enter into contracts, to  
8 create revocable or irrevocable trusts of property of the estate which may extend  
9 beyond the person's disability or life, to exercise options of the disabled person to  
10 purchase securities or other property, to exercise the person's rights to elect  
11 options and change beneficiaries under insurance and annuity policies and to  
12 surrender the policies for their cash value, to exercise the person's right to an  
13 elective share in the estate of the person's deceased spouse, and to renounce  
14 any interest by testate or intestate succession or by inter vivos transfer.

15 d. The court may exercise or direct the exercise of its authority to exercise or  
16 release powers of appointment of which the protected person is donee, to  
17 renounce interests, to make gifts in trust or otherwise exceeding twenty percent  
18 of any year's income of the estate, or to change beneficiaries under insurance  
19 and annuity policies, only if satisfied, after notice and hearing, that it is in the best  
20 interests of the protected person, and that the protected person either is  
21 incapable of consenting or has consented to the proposed exercise of power.

22 e. An order made pursuant to this section determining that appointment of a  
23 conservator or other protective order is appropriate has no effect on the capacity  
24 of the protected person.

25 3. Unless terminated earlier by the court, an order appointing or reappointing a  
26 conservator under this section is effective for up to five years. At least ninety days  
27 before the expiration of the initial order of appointment or any following order of  
28 reappointment, the court shall request and consider information submitted by the  
29 conservator, the protected person, the protected person's attorney, if any, and any  
30 interested persons regarding whether the need for a conservator continues to exist. If  
31 it is recommended the conservatorship continue, the court may appoint a guardian ad



1            litem in accordance with section 30.1-29-07. The court shall hold a hearing on whether  
2            the conservatorship should continue. Following the hearing and consideration of  
3            submitted information, the court may reappoint the conservator for up to another five  
4            years, allow the existing order to expire, or appoint a new conservator in accordance  
5            with this section. The supreme court, by rule or order, shall provide for regular review  
6            of conservatorships in existence on August 1, 2017.

7            **SECTION 5. AMENDMENT.** Subsection 1 of section 30.1-29-09 of the North Dakota  
8            Century Code is amended and reenacted as follows:

9            1. If it is established in a proper proceeding that a basis exists, as described in section  
10            30.1-29-01, for affecting the property and affairs of a person, the court, without  
11            appointing a conservator, may authorize, direct, or ratify any transaction necessary or  
12            desirable to achieve any security, service, or care arrangement meeting the  
13            foreseeable needs of the protected person. Protective arrangements include payment,  
14            delivery, deposit, or retention of funds or property, sale, mortgage, lease, or other  
15            transfer of property, entry into an annuity contract, a contract for life care, a deposit  
16            contract, a contract for training and education, or addition to or establishment of a  
17            suitable trust. The sale of real property is subject to section 30.1-29-22.

18            **SECTION 6. AMENDMENT.** Section 30.1-29-18 of the North Dakota Century Code is  
19            amended and reenacted as follows:

20            **30.1-29-18. (5-418) Inventory and records.**

21            Within ninety days after appointment, every conservator shall prepare and file with the  
22            appointing court a complete inventory of the estate of the protected person together with the  
23            conservator's oath or affirmation that it is complete and accurate so far as the conservator is  
24            informed. The conservator shall provide a copy thereof to the protected person if the protected  
25            person can be located, has attained the age of fourteen years, and has sufficient mental  
26            capacity to understand these matters, ~~and to any parent or guardian with whom the protected~~  
27            ~~person resides~~ and to any guardian, spouse, or parent, if the protected person is a minor, and to  
28            any interested persons designated by the court in its order. The conservator shall keep suitable  
29            records of the conservator's administration and exhibit the same on request of any interested  
30            person.

1       **SECTION 7. AMENDMENT.** Section 30.1-29-19 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **30.1-29-19. (5-419) Annual reports and accounts.**

- 4       1. At least once annually and at other times as the court may direct, a conservator shall  
5 file a report and account with the court regarding the exercise of powers and duties  
6 specified in the court's order of appointment. The report must describe any  
7 expenditure and income affecting the protected person, any sale or transfer of  
8 property affecting the protected person, and any exercise of authority by the  
9 conservator affecting the protected person.
- 10      2. On termination of the protected person's minority ~~or disability~~, or on termination by a  
11 court with jurisdiction, a conservator shall file a final report and accounting and provide  
12 a copy of the report or accounting to the protected person and other parties as  
13 indicated in section 30.1-29-18. The report or accounting must be filed with the clerk of  
14 district court. The filing of the report or accounting does not constitute the court's  
15 approval of the report or accounting. The court may approve a report and settle and  
16 allow an accounting only upon notice to the protected person and other interested  
17 persons who have made an appearance or requested notice of proceedings. ~~Subject~~  
18 ~~to appeal or vacation within the time permitted, an~~An order, ~~made upon~~after notice and  
19 hearing, allowing an intermediate account of a conservator, adjudicates ~~as to~~ liabilities  
20 concerning the matters considered in connection therewith, adequately disclosed in  
21 the accounting. ~~An~~ order, ~~made upon~~after notice and hearing, allowing a final account,  
22 adjudicates ~~as to~~ all previously unsettled liabilities ~~of the conservator to the protected~~  
23 ~~person or the protected person's successors~~ relating to the conservatorship. In  
24 connection with any account, the court may require a conservator to submit to a  
25 physical check of the estate in the conservator's control, to be made in any manner  
26 the court may specify. The office of the state court administrator shall provide printed  
27 forms that may be used to fulfill reporting requirements. Any report must be similar in  
28 substance to the state court administrator's form. The forms must be available in the  
29 office of clerk of district court or obtainable through the supreme court's internet  
30 website.

1           3. Copies of the conservator's annual report to the court and of any other reports  
2           required by the court must be mailed by the conservator to the protected person and  
3           ~~any interested persons designated by the court in its order~~other parties as required  
4           under section 30.1-29-18. The protected person's copy must be accompanied by a  
5           statement, printed with not less than double-spaced twelve-point type, of the protected  
6           person's right to seek alteration, limitation, or termination of the conservatorship at any  
7           time.

8           **SECTION 8. AMENDMENT.** Section 30.1-29-22 of the North Dakota Century Code is  
9           amended and reenacted as follows:

10           **30.1-29-22. (5-422) ~~Sale, encumbrance, or transaction involving conflict of interest --~~**  
11           **~~Voidable exceptions~~Authorization of single transaction to sell real property of the**  
12           **protected person.**

- 13           1. Any sale or encumbrance to a conservator, the conservator's spouse, agent, or  
14           attorney, or any corporation, limited liability company, or trust in which the conservator  
15           has a substantial beneficial interest, or any transaction which is affected by a  
16           substantial conflict of interest is voidable unless the transaction is approved by the  
17           court, after notice to interested persons and others as directed by the court.
- 18           2. A conservator shall move the court for authorization to sell real property of the person  
19           to be protected, upon such terms as the court may order, for the purpose of paying the  
20           protected person's debts; providing for the care, maintenance, rehabilitation, training,  
21           or education of the person to be protected or the dependents of the person to be  
22           protected; or for any other purpose in the best interests of the person to be protected.
- 23           a. The motion must contain:
- 24               (1) A description of the property;
- 25               (2) The details of the sale;
- 26               (3) The reason for the transaction;
- 27               (4) The current fair market value of the property, including an appraisal unless  
28               good cause is shown;
- 29               (5) An explanation of why the transaction is in the best interest of the person to  
30               be protected; and

1           (6) A notice that any person interested in the real property of the person to be  
2                     protected must file an objection to the transaction within ten days of the  
3                     notice and demand a hearing.

4           b. The motion must be served upon the protected person, the spouse of the person  
5                     to be protected, and all interested persons.

6           c. Consent of the spouse of the person to be protected or interested persons must  
7                     be filed with the motion. If the motion is unopposed, the court may authorize the  
8                     transaction without a hearing or may conduct a hearing and require proof of the  
9                     matters necessary to support the authorization of the transaction.

10          d. The court's order must include specific findings regarding whether the transaction  
11                     is in the best interests of the person to be protected.

12           **SECTION 9. AMENDMENT.** Section 30.1-29-24 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14           **30.1-29-24. (5-424) Powers of conservator in administration.**

15          1. A conservator has all of the powers conferred herein and any additional powers  
16             conferred by law on trustees in this state. ~~In addition, a conservator of the estate of an~~  
17             ~~unmarried minor, as to whom no one has parental rights, has the duties and powers of~~  
18             ~~a guardian of a minor described in section 30.1-27-09 until the minor marries, but the~~  
19             ~~parental rights so conferred on a conservator do not preclude appointment of a~~  
20             ~~guardian as provided by chapter 30.1-27.~~

21          2. A conservator has power, without court authorization or confirmation, to invest and  
22             reinvest funds of the estate as would a trustee.

23          3. A conservator, acting reasonably in efforts to accomplish the purpose for which the  
24             conservator was appointed, except as provided in section 30.1-29-22, may act without  
25             court authorization or confirmation, to:

26           a. Collect, hold, and retain assets of the estate, including land in another state, until,  
27             in the conservator's judgment, disposition of the assets should be made, and the  
28             assets may be retained even though they include an asset in which the  
29             conservator is personally interested.

30           b. Receive additions to the estate.

31           c. Continue or participate in the operation of any business or other enterprise.

- 1 d. Acquire an undivided interest in an estate asset in which the conservator, in any  
2 fiduciary capacity, holds an undivided interest.
- 3 e. Invest and reinvest estate assets in accordance with subsection 2.
- 4 f. Deposit estate funds in a bank, including a bank operated by the conservator.
- 5 g. Acquire or dispose of an estate asset, including land in another state for cash or  
6 on credit, at public or private sale, and to manage, develop, improve, exchange,  
7 partition, change the character of, or abandon an estate asset.
- 8 h. Make ordinary or extraordinary repairs or alterations in buildings or other  
9 structures, demolish any improvements, and raze existing or erect new party  
10 walls or buildings.
- 11 i. Subdivide, develop, or dedicate land to public use, to make or obtain the vacation  
12 of plats and adjust boundaries, to adjust differences in valuation on exchange or  
13 to partition by giving or receiving considerations, and to dedicate easements to  
14 public use without consideration.
- 15 j. Enter for any purpose into a lease as lessor or lessee with or without option to  
16 purchase or renew for a term within or extending beyond the term of the  
17 conservatorship.
- 18 k. Enter into a lease or arrangement for exploration and removal of minerals or  
19 other natural resources or enter into a pooling or unitization agreement.
- 20 l. Grant an option involving disposition of an estate asset, except the sale of real  
21 property, to take an option for the acquisition of any asset.
- 22 m. Vote a security, in person or by general or limited proxy.
- 23 n. Pay calls, assessments, and any other sums chargeable or accruing against or  
24 on account of securities.
- 25 o. Sell or exercise stock or membership interest, subscription or conversion rights,  
26 to consent, directly or through a committee or other agent, to the reorganization,  
27 consolidation, merger, dissolution, or liquidation of a corporation, limited liability  
28 company, or other business enterprise.
- 29 p. Hold a security in the name of a nominee or in other form without disclosure of  
30 the conservatorship so that title to the security may pass by delivery, but the

- 1 conservator is liable for any act of the nominee in connection with the stock so  
2 held.
- 3 q. Insure the assets of the estate against damage or loss, and the conservator  
4 against liability with respect to third persons.
- 5 r. Borrow money to be repaid from estate assets or otherwise, to advance money  
6 for the protection of the estate or the protected person, and for all expenses,  
7 losses, and liability sustained in the administration of the estate or because of the  
8 holding or ownership of any estate assets and the conservator has a lien on the  
9 estate as against the protected person for advances so made.
- 10 s. Pay or contest any claim, to settle a claim by or against the estate or the  
11 protected person by compromise, arbitration, or otherwise, and to release, in  
12 whole or in part, any claim belonging to the estate to the extent that the claim is  
13 uncollectible.
- 14 t. Pay taxes, assessments, compensation of the conservator, and other expenses  
15 incurred in the collection, care, administration, and protection of the estate.
- 16 u. Allocate items of income or expense to either estate income or principal, as  
17 provided by law, including creation of reserves out of income for depreciation,  
18 obsolescence, or amortization, or for depletion in mineral or timber properties.
- 19 v. Pay any sum distributable to a protected person or the protected person's  
20 dependent without liability to the conservator, by paying the sum to the distributee  
21 or by paying the sum for the use of the distributee either to the distributee's  
22 guardian or, if none, to a relative or other person with custody of the distributee's  
23 person.
- 24 w. Employ persons, including attorneys, auditors, investment advisers, or agents,  
25 even though they are associated with the conservator, to advise or assist the  
26 conservator in the performance of the conservator's administrative duties, to act  
27 upon their recommendation without independent investigation, and instead of  
28 acting personally, to employ one or more agents to perform any act of  
29 administration, whether or not discretionary.

- 1           x. Prosecute or defend actions, claims, or proceedings in any jurisdiction for the  
2           protection of estate assets and of the conservator in the performance of the  
3           conservator's duties.
- 4           y. Execute and deliver all instruments which will accomplish or facilitate the  
5           exercise of the powers vested in the conservator.

6           **SECTION 10. AMENDMENT.** Section 30.1-29-25 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8           **30.1-29-25. (5-425) Distributive duties and powers of conservator.**

- 9           1. A conservator may expend or distribute income or principal of the estate without court  
10           authorization or confirmation for the support, education, care, or benefit of the  
11           protected person and the protected person's dependents in accordance with the  
12           following principles:
- 13           a. The conservator is to consider recommendations relating to the appropriate  
14           standard of support, education, and benefit for the protected person made by a  
15           parent or guardian, if any. The conservator may not be surcharged for sums paid  
16           to persons or organizations actually furnishing support, education, or care to the  
17           protected person pursuant to the recommendations of a parent or guardian of the  
18           protected person unless the conservator knows that the parent or guardian is  
19           deriving personal financial benefit therefrom, including relief from any personal  
20           duty of support, or unless the recommendations are clearly not in the best  
21           interests of the protected person.
- 22           b. The conservator is to expend or distribute sums reasonably necessary for the  
23           support, education, care, or benefit of the protected person with due regard to:
- 24           (1) The size of the estate, the probable duration of the conservatorship, and the  
25           likelihood that the protected person, at some future time, may be fully able  
26           to manage the protected person's affairs and the estate which has been  
27           conserved for the protected person.
- 28           (2) The accustomed standard of living of the protected person and members of  
29           the protected person's household.
- 30           (3) Other funds or sources used for the support of the protected person.

- 1           c. The conservator may expend funds of the estate for the support of persons  
2           legally dependent on the protected person and others who are members of the  
3           protected person's household, who are unable to support themselves, and who  
4           are in need of support.
- 5           d. Funds expended under this subsection may be paid by the conservator to any  
6           person, including the protected person, to reimburse for expenditures that the  
7           conservator might have made, or in advance for services to be rendered to the  
8           protected person when it is reasonable to expect that they will be performed and  
9           advance payments are customary or reasonably necessary under the  
10          circumstances.
- 11          2. If the estate is ample to provide for the purposes implicit in the distributions authorized  
12          by the preceding subsection, a conservator for a protected person other than a minor  
13          has power to make gifts to charity and other objects as the protected person might  
14          have been expected to make, in amounts which do not exceed in total for any year  
15          twenty percent of the income from the estate.
- 16          3. When a minor who has not been adjudged disabled under subsection 2 of section  
17          30.1-29-01 attains majority, the minor's conservator, after meeting all prior claims and  
18          expenses of administration, shall pay over and distribute all funds and properties to  
19          the former protected person as soon as possible. A final report must be filed as  
20          provided in section 30.1-29-19.
- 21          4. ~~When the conservator is satisfied that a protected person's disability other than~~  
22          ~~minority has ceased~~When the court has determined the conservatorship is no longer  
23          needed, the conservator, after meeting all prior claims and expenses of administration,  
24          shall pay over and distribute all funds and properties to the former protected person as  
25          soon as possible. A final report must be filed as provided in section 30.1-29-19.
- 26          5. If a protected person dies, the conservator shall deliver to the court for safekeeping  
27          any will of the deceased protected person which may have come into the  
28          conservator's possession, inform the executor or a beneficiary named therein that the  
29          conservator has done so, and retain the estate for delivery to a duly appointed  
30          personal representative of the decedent or other persons entitled thereto. If after forty  
31          days from the death of the protected person no other person has been appointed



1 personal representative and no application or petition for appointment is before the  
2 court, the conservator may apply to exercise the powers and duties of a personal  
3 representative so that the conservator may proceed to administer and distribute the  
4 decedent's estate without additional or further appointment. Upon application for an  
5 order granting the powers of a personal representative to a conservator, after notice to  
6 any person demanding notice under section 30.1-13-04 and to any person nominated  
7 executor in any will of which the applicant is aware, the court may order the conferral  
8 of the power upon determining that there is no objection, and endorse the letters of the  
9 conservator to note that the formerly protected person is deceased and that the  
10 conservator has acquired all of the powers and duties of a personal representative.  
11 The making and entry of an order under this section ~~shall have~~has the effect of an  
12 order of appointment of a personal representative as provided in section 30.1-14-08  
13 and chapters 30.1-17 through 30.1-21, except that estate in the name of the  
14 conservator, after administration, may be distributed to the decedent's successors  
15 without prior retransfer to the conservator as personal representative.

16 **SECTION 11.** A new section to chapter 30.1-29 of the North Dakota Century Code is  
17 created and enacted as follows:

18 **Emergency conservator.**

- 19 1. On petition by a person interested in the estate of the person to be protected, the court  
20 may appoint an emergency conservator if the court finds that compliance with the  
21 procedures in this chapter likely will result in substantial harm to the estate of the  
22 person to be protected, and that no other person appears to have authority and  
23 willingness to act in the circumstances. The court may appoint the conservator for a  
24 specified period of time, not to exceed ninety days. Immediately upon receipt of the  
25 petition for an emergency conservator, the court shall appoint a guardian ad litem to  
26 advocate for the best interests of the estate of the person to be protected in the  
27 proceeding and any subsequent proceeding. Except as otherwise provided in  
28 subsection 2, reasonable notice of the time and place of a hearing on the petition must  
29 be given to the person whose estate is to be protected, the person's spouse, if any,  
30 and any other persons as the court directs.

- 1        2. An emergency conservator may be appointed without notice only if the court finds from  
2        affidavit or other sworn testimony that the estate of the person to be protected will be  
3        substantially harmed before a hearing on the appointment can be held. If the court  
4        appoints an emergency conservator without notice, the person whose estate is to be  
5        protected and the person's spouse, if any, must be given notice of the appointment  
6        within forty-eight hours. The court shall hold a hearing on the appropriateness of the  
7        appointment within ten days after the appointment.
- 8        3. Appointment of an emergency conservator, with or without notice, is not a  
9        determination of the person or the estate of the person's need for protection.
- 10       4. The court may remove an emergency conservator at any time. An emergency  
11       conservator shall make any report the court requires. In all other respects, the  
12       provisions of this chapter concerning conservators apply to an emergency  
13       conservator.

**Senate Bill 2222**  
**Senate Judiciary Committee**

**Testimony Presented by Cynthia M. Feland**  
**District Court Judge**  
**Chair, Guardianship Workgroup**

Chair Larson, members of the Senate Judiciary Committee, my name is Cynthia Feland, District Court Judge in the South Central Judicial District and Chair of the Guardianship Workgroup. The Guardianship Workgroup is a multi-disciplinary group of professionals with extensive and varied experience in the area of guardianships and conservatorships created in 2013 to evaluate and improve procedures in cases involving guardianships for incapacitated adults, minors and in conservatorship cases. For the last two legislative sessions, the Guardianship Workgroup has identified and recommended a number of statutory amendments to improve and strengthen procedures in cases involving guardianship for incapacitated adults and conservatorship cases.

The proposed amendments contained in Senate Bill 2222 are intended to clarify the procedures in conservatorship cases, to require court approval of any sale of real property, to provide factors for determining reasonable compensation and to add a new section authorizing the appointment of an emergency conservator.

**Section 1:**

Page 1, lines 11 through 13, amends section 30.1-03-02 to clarify that notice of a hearing may not be waived by a ward, proposed ward or protected person. The proposed amendment is consistent with amendments being proposed to section 30.1-28-09(2) in Senate Bill 2224. The current language is part of the original Uniform Law and the comments contain no explanation for inclusion of the waiver provision. Although the currently language does not

specifically identify the ward, proposed ward or protected person as a “person” able to waive notice, the proposed language eliminates any ambiguity.

## **Section 2**

Page 1, lines 16 through 23, amends section 30.1-29-05 with stylistic changes to clarify that someone other than the petitioner may serve notice of the proceeding.

Page 2, lines 1 through 5, amends section 30.1-29-05 to remove the waiver of notice by the proposed protected person consistent with the proposed amendment in Section 1 of the bill and amendments being proposed to Section 30.1-28-09(2) in Senate Bill 2224.

## **Section 3**

Page 3, lines 2 through 3, amends section 30.1-29-07(1)(f) to modify the guardian ad litem’s duties in minority conservatorship cases to include an assessment of the protected person ability to attend the hearing in person or by reliable electronic means.

Page 3, lines 27 through 28, amends section 30.1-29-07(2)(f) to modify the guardian ad litem’s duties in all other conservatorship cases to include an assessment of the protected person ability to attend the hearing in person or by reliable electronic means.

Page 4, lines 14 through 16, amends section 30.1-29-07(3)(a)(4) to modify the expert examiner’s duties to include an assessment of the protected person ability to attend the hearing in person or by reliable electronic means.

Page 4, lines 23 through 24, amends section 30.1-29-07(4) to add the option for the protected person to appear by remote means. In making this recommendation the discussed both

the personal and financial benefits to the protected person of not being required to travel to a courthouse or having the court proceeding held at the location where they are located.

Page 4, lines 18 through 20, and line 30 through Page 5, line 1, moves the language concerning the Court's consideration of the guardian ad litem's and expert examiner's reports from subsection (3)(b) of section 30.1-29-07 to subsection (5) of section 30.1-29-07.

Page 5, lines 9 through 10, amends section 30.1-29-07(6) to clarify that the guardian ad litem is discharged from their duties following the hearing.

Page 5, line 11 through Page 6, line 2, amends section 30.1-29-07 to add subsection 7 providing a list factors for courts to consider in determining reasonable compensation for conservatorship services.

Although conservators are allowed to receive compensation for their services, there is currently no statutory provision, rule or case law providing guidance in determining reasonable or appropriate compensation. The lack of guidance is especially problematic in cases where challenges have been made to the compensation sought by conservators. The list of factors provided was comprised by the Workgroup after reviewing other state statutes and case law. Use of factors is consistent with the requirements for judicial determinations in other areas of the law and provided the court with a basis for determining the reasonableness of requested fees.

Page 6, lines 3 through 6, amends section 30.1-29-07 to add subsection 8 to clarify that specific findings are not required for each factor and that not all factors will be present in each case. Determination as to the weight to be given each factor would remain within the court's discretion.

Page 6, lines 7 through 8, amends section 30.1-29-07 to add subsection 9 to clarify that the conservator must receive approval from the court prior to receiving any compensation for services.

#### **Section 4**

Page 6, line 17, amends subsection 2 of section 30.1-29-08 to include a reference to the proposed amendments to section 30.1-29-22 in section 8 of this bill adding additional requirements for sale of the protected persons real property.

Page 6, line 25, amends subsubsection b of subsection 2 of section 30.1-29-08 to clarify that the provision applies to minors regardless of the existence of a disability.

#### **Section 5**

Page 8, line 17, amends subsection 1 of section 30.1-29-09 to include a reference to the proposed amendments to section 30.1-29-22 in Section 8 of this bill adding additional requirements for sale of the protected persons real property.

#### **Section 6**

Page 8, lines 26 through 28, amends subsection 1 of section 30.1-29-18 to expand the list of persons entitled to a copy of the beginning inventory to ensure that all of the proper persons receive copies.

#### **Section 7**

Page 9, lines 10 through 13, and 17 through 23, amends subsection 2 of section 30.1-29-19 to clarify that a final report must be filed in all conservatorship cases and to include a reference to the proposed amendments to section 30.1-29-18 in section 6 of this bill expanding the list of persons entitled to a copy of the report.



Page 10, lines 3 through 4, amends subsection 3 of section 30.1-29-19 to include a reference to the proposed amendments to section 30.1-29-18 in section 6 of this bill expanding the list of persons entitled to a copy of the annual report.

### **Section 8**

Page 10, line 10 through Page 11, line 11, amends section 30.1-29-22 to add a new subsection establishing requirements and procedures for the sale of the protected person's property which mirror those in the guardianship statutes. Although conservators are responsible for the fiscal health of the protected person's estate and typically have more skill when it comes to handling finances than guardians, the Workgroup concluded that any sale of real property owned by the protected person should always be pre-approved by the Court.

Under the proposed amendments, the conservator's request must include the type and description of the property, details of and reason for the requested transaction, method used to determine the current fair market value of the property, an explanation identifying why the proposed transaction is in the best interests of the person to be protected, and a notice giving interested persons ten (10) days to object and demand a hearing. The ten (10) day period was chosen after considering potential financial and market pressures and is consistent with the sale of real property by a guardian.

Absent good cause, transactions involving the sale of real property will require an appraisal. The "good cause" exception was included to address situations where an appraisal may not be feasible and other sources are available which provide the Court with sufficient evidence as to the appropriateness of the proposed value placed on the ward's real property. Some of the other sources considered by the Workgroup included USDA's publication of County Rents and Land Values, annual survey of County Rents

and Prices conducted by the North Dakota Department of Trust Lands, and records evidencing recent sales of similar real property in the same area.

Under subsection b of subsection 2, the conservator is required to serve the ward, the ward's spouse, and all interested parties with the motion. The Workgroup included notice to the ward's spouse separately to maintain consistency with other notice provisions in the chapter and to address any interest a spouse may have in the property at issue.

Subsubsection c of subsection 2 provides for an expedited process where the protected person's spouse and other interested parties consent to proposed sale of the protected person's real property. Any consent to the sale of the real property must be filed with the conservator's motion. Unless required by the Court, a hearing is not required if the motion for sale of property is unopposed by all of the interested parties.

Subsubsection d of subsection 2 requires the Court to make specific findings regarding whether the proposed sale of property is in the best interests of the ward.

### **Section 9**

Page 11, lines 16-20, amends subsection 1 of section 30.1-29-24 to remove language that is superseded by chapter 30.1-27 and 27-20.1.

Page 11, line 24, amends subsection 3 of section 30.1-29-24 to add a reference to the proposed additional requirements for sale of the protected person's real property under the proposed amendments to 30.1-29-22 in Section 8 of the bill.

Page 12, lines 20-21, amends subsection i of section 30.1-29-24(3) to except the sale of real estate from actions which may be taken by a conservator without a court order.



**Section 10**

Page 15, lines 19-20, amends subsection 3 of section 30.1-29-25 to clarify that a final report must be filed when minor's conservatorship is terminated.

Page 15, lines 21-25, amends subsection 4 of section 30.1-29-25 to clarify that the court, not the conservator will determine whether a conservatorship is no longer needed, and that a final report must be filed if the conservatorship is terminated.

**Section 11**

Page 16, line 18 through Page 17, line 13 amends chapter 30.1-29 to create a new section providing a procedure for the appointment of an emergency conservator to protect the assets in the estate of a proposed protected person that may be diminished if immediate action is not taken. Prior to the conservatorship hearing, there is no provision to immediately protect a proposed protected person's assets. After lengthy discussions about the limitations of an emergency guardianship, the potential for abuse of authority under an existing power of attorney, exertion of undue influence on a proposed protected person and the potential need for protection of an estate where guardianship is not appropriate, the Workgroup is recommending establishing a procedure for the appointment of an emergency conservator.

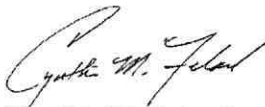
Subsection 1 authorizes an emergency conservatorship where substantial harm to the estate of a proposed protected person may occur prior to a hearing seeking establishment of a conservatorship hearing. Mirroring the provisions for an emergency guardianship, the appointment is for a period not to exceed 90 days, requires the appointment of a guardian ad litem, and notice to the person to be protected, that person's spouse, if any, and anyone else directed by the court.

Subsection 2 provides for an ex parte appointment of an emergency conservator if the court finds that substantial harm will occur before a hearing can be held. Again, mirroring the ex parte emergency appointment of a guardian, notice must then be given to the protected person, that person's spouse, if any, and anyone else the directed by court within 48 hours of the ex parte appointment and a hearing must be held within 10 days.

Subsection 3 clarifies that the appointment of the emergency conservatorship is not a finding that the person needs protection.

Subsection 4 allows the court to remove the emergency conservator at any time and require them to submit reports. The proposed language also clarifies that all other provisions of the chapter apply.

Respectfully Submitted:



Cynthia M. Feland  
District Judge  
South Central Judicial District  
Chair, Guardianship Workgroup

Guardianship Workgroup Members: Judge **Cynthia M. Feland**, Chair; Judge **Pamela Nesvig**, South Central Judicial District; Judge **Stacey Louser**, North Central Judicial District; Judge **Cherie Clark**, Southeast Judicial District; **Jon Alm**, N.D. Department of Health and Human Services; Dr. Gabriela Balf, psychiatrist; **Cheryl Bergan**, attorney, Fargo; **Jennifer Lee**, Executive Director, North Dakota Legal Services; **Thomas Jackson**, attorney, Bismarck, **Tracey Laaveg**, attorney, Park River; **Jesse Maier**, attorney, Fargo; **Mikayla Reis**, attorney, Bismarck; **Heather Krumm**, attorney, Mandan; **Lonnie Wagner**, ND Department of Veterans Affairs; **Aaron Birst**, North Dakota Association of Counties; **Donna Byzewski**, Catholic Charities; **Michelle Gayette**, N.D. Department of Health and Human Services; **Rachael Sinness**, Protection and Advocacy; **Chris Carlson**, attorney, Bismarck; **Brittany Fode**, N.D. Department of Health and Human Services; **Sally Holewa**, State Court Administrator; **Donna Wunderlich**,

Trial Court Administrator, Unit 3; **Karen Kringlie**, Juvenile Court Director, Unit 2; **Catherine Palsgraff**, Citizen Access Coordinator; **Cathy Ferderer**, Family Law Mediation Program Administrator; **Rose Nichols**, Guardian Monitoring Program; **Norma O'Halloran**, Grand Forks County Clerk of Court's Office; **Rebecca Nelson**, Ramsey County Clerk of Court; **Scott Bernstein**, Executive Director, Guardian and Protective Services; **Diane Osland**, Lutheran Social Services of MN; **Roxane Romanick**, CEO, Designer Genes of North Dakota, Inc.; **Keith Vavrovskv**, Director of Social Services, Life Skills and Transition Center; and **Margo Haut**, Guardian Angels Inc.

**Senate Bill 2222  
Senate Judiciary Committee**

**Testimony Presented by Cynthia M. Feland  
District Court Judge  
Chair, Guardianship Workgroup  
March 15, 2023**

Chair Klemin, members of the House Judiciary Committee, my name is Cynthia Feland, District Court Judge in the South Central Judicial District and Chair of the Guardianship Workgroup. The Guardianship Workgroup is a multi-disciplinary group of professionals with extensive and varied experience in the area of guardianships and conservatorships created in 2013 to evaluate and improve procedures in cases involving guardianships for incapacitated adults, minors and in conservatorship cases. For the last four legislative sessions, the Guardianship Workgroup has identified and recommended a number of statutory amendments to improve and strengthen procedures in cases involving guardianship for incapacitated adults and conservatorship cases.

The proposed amendments contained in Senate Bill 2222 are intended to clarify the procedures in conservatorship cases, to require court approval of any sale of real property, to provide factors for determining reasonable compensation and to add a new section authorizing the appointment of an emergency conservator.

**Section 1:**

Page 1, lines 11 through 13, amends section 30.1-03-02 to clarify that notice of a hearing may not be waived by a ward, proposed ward or protected person. The proposed amendment is consistent with amendments being proposed to section 30.1-28-09(2) in Senate Bill 2224. The current language is part of the original Uniform Law and the comments contain no explanation for inclusion of the waiver provision. Although the currently language does not

specifically identify the ward, proposed ward or protected person as a “person” able to waive notice, the proposed language eliminates any ambiguity.

## **Section 2**

Page 1, lines 16 through 23, amends section 30.1-29-05 with stylistic changes to clarify that someone other than the petitioner may serve notice of the proceeding.

Page 2, lines 1 through 5, amends section 30.1-29-05 to remove the waiver of notice by the proposed protected person consistent with the proposed amendment in Section 1 of the bill and amendments being proposed to Section 30.1-28-09(2) in Senate Bill 2224.

## **Section 3**

Page 3, lines 2 through 3, amends section 30.1-29-07(1)(f) to modify the guardian ad litem’s duties in minority conservatorship cases to include an assessment of the protected person ability to attend the hearing in person or by reliable electronic means.

Page 3, lines 27 through 28, amends section 30.1-29-07(2)(f) to modify the guardian ad litem’s duties in all other conservatorship cases to include an assessment of the protected person ability to attend the hearing in person or by reliable electronic means.

Page 4, lines 14 through 16, amends section 30.1-29-07(3)(a)(4) to modify the expert examiner’s duties to include an assessment of the protected person ability to attend the hearing in person or by reliable electronic means.

Page 4, lines 23 through 24, amends section 30.1-29-07(4) to add the option for the protected person to appear by remote means. In making this recommendation the discussed both

the personal and financial benefits to the protected person of not being required to travel to a courthouse or having the court proceeding held at the location where they are located.

Page 4, lines 18 through 20, and line 30 through Page 5, line 1, moves the language concerning the Court's consideration of the guardian ad litem's and expert examiner's reports from subsection (3)(b) of section 30.1-29-07 to subsection (5) of section 30.1-29-07.

Page 5, lines 9 through 10, amends section 30.1-29-07(6) to clarify that the guardian ad litem is discharged from their duties following the hearing.

Page 5, line 11 through Page 6, line 2, amends section 30.1-29-07 to add subsection 7 providing a list factors for courts to consider in determining reasonable compensation for conservatorship services.

Although conservators are allowed to receive compensation for their services, there is currently no statutory provision, rule or case law providing guidance in determining reasonable or appropriate compensation. The lack of guidance is especially problematic in cases where challenges have been made to the compensation sought by conservators. The list of factors provided was comprised by the Workgroup after reviewing other state statutes and case law. Use of factors is consistent with the requirements for judicial determinations in other areas of the law and provided the court with a basis for determining the reasonableness of requested fees.

Page 6, lines 3 through 6, amends section 30.1-29-07 to add subsection 8 to clarify that specific findings are not required for each factor and that not all factors will be present in each case. Determination as to the weight to be given each factor would remain within the court's discretion.

Page 6, lines 7 through 8, amends section 30.1-29-07 to add subsection 9 to clarify that the conservator must receive approval from the court prior to receiving any compensation for services.

#### **Section 4**

Page 6, line 17, amends subsection 2 of section 30.1-29-08 to include a reference to the proposed amendments to section 30.1-29-22 in section 8 of this bill adding additional requirements for sale of the protected persons real property.

Page 6, line 25, amends subsection b of subsection 2 of section 30.1-29-08 to clarify that the provision applies to minors regardless of the existence of a disability.

#### **Section 5**

Page 8, line 17, amends subsection 1 of section 30.1-29-09 to include a reference to the proposed amendments to section 30.1-29-22 in Section 8 of this bill adding additional requirements for sale of the protected persons real property.

#### **Section 6**

Page 8, lines 26 through 28, amends subsection 1 of section 30.1-29-18 to expand the list of persons entitled to a copy of the beginning inventory to ensure that all of the proper persons receive copies.

#### **Section 7**

Page 9, lines 10 through 13, and 17 through 23, amends subsection 2 of section 30.1-29-19 to clarify that a final report must be filed in all conservatorship cases and to include a reference to the proposed amendments to section 30.1-29-18 in section 6 of this bill expanding the list of persons entitled to a copy of the report.

Page 10, lines 3 through 4, amends subsection 3 of section 30.1-29-19 to include a reference to the proposed amendments to section 30.1-29-18 in section 6 of this bill expanding the list of persons entitled to a copy of the annual report.

### **Section 8**

Page 10, line 10 through Page 11, line 11, amends section 30.1-29-22 to add a new subsection establishing requirements and procedures for the sale of the protected person's property which mirror those in the guardianship statutes. Although conservators are responsible for the fiscal health of the protected person's estate and typically have more skill when it comes to handling finances than guardians, the Workgroup concluded that any sale of real property owned by the protected person should always be pre-approved by the Court.

Under the proposed amendments, the conservator's request must include the type and description of the property, details of and reason for the requested transaction, method used to determine the current fair market value of the property, an explanation identifying why the proposed transaction is in the best interests of the person to be protected, and a notice giving interested persons ten (10) days to object and demand a hearing. The ten (10) day period was chosen after considering potential financial and market pressures and is consistent with the sale of real property by a guardian.

Absent good cause, transactions involving the sale of real property will require an appraisal. The "good cause" exception was included to address situations where an appraisal may not be feasible and other sources are available which provide the Court with sufficient evidence as to the appropriateness of the proposed value placed on the protected person's real property. Some of the other sources considered by the Workgroup included USDA's publication of County Rents and Land Values, annual



survey of County Rents and Prices conducted by the North Dakota Department of Trust Lands, and records evidencing recent sales of similar real property in the same area.

Under subsection b of subsection 2, the conservator is required to serve the protected person, the protected person's spouse, and all interested parties with the motion. The Workgroup included notice to the protected person's spouse separately to maintain consistency with other notice provisions in the chapter and to address any interest a spouse may have in the property at issue.

Subsubsection c of subsection 2 provides for an expedited process where the protected person's spouse and other interested parties consent to proposed sale of the protected person's real property. Any consent to the sale of the real property must be filed with the conservator's motion. Unless required by the Court, a hearing is not required if the motion for sale of property is unopposed by all of the interested parties.

Subsubsection d of subsection 2 requires the Court to make specific findings regarding whether the proposed sale of property is in the best interests of the protected person.

## **Section 9**

Page 11, lines 16-20, amends subsection 1 of section 30.1-29-24 to remove language that is superseded by chapter 30.1-27 and 27-20.1.

Page 11, line 24, amends subsection 3 of section 30.1-29-24 to add a reference to the proposed additional requirements for sale of the protected person's real property under the proposed amendments to 30.1-29-22 in Section 8 of the bill.

Page 12, lines 20-21, amends subsection i of section 30.1-29-24(3) to except the sale of real estate from actions which may be taken by a conservator without a court order.

### **Section 10**

Page 15, lines 19-20, amends subsection 3 of section 30.1-29-25 to clarify that a final report must be filed when minor's conservatorship is terminated.

Page 15, lines 21-25, amends subsection 4 of section 30.1-29-25 to clarify that the court, not the conservator will determine whether a conservatorship is no longer needed, and that a final report must be filed if the conservatorship is terminated.

### **Section 11**

Page 16, line 18 through Page 17, line 13 amends chapter 30.1-29 to create a new section providing a procedure for the appointment of an emergency conservator to protect the assets in the estate of a proposed protected person that may be diminished if immediate action is not taken. Prior to the conservatorship hearing, there is no provision to immediately protect a proposed protected person's assets. After lengthy discussions about the limitations of an emergency guardianship, the potential for abuse of authority under an existing power of attorney, exertion of undue influence on a proposed protected person and the potential need for protection of an estate where guardianship is not appropriate, the Workgroup is recommending establishing a procedure for the appointment of an emergency conservator.

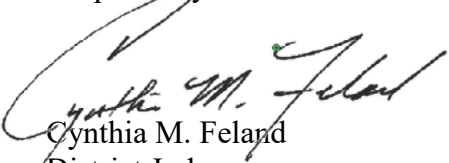
Subsection 1 authorizes an emergency conservatorship where substantial harm to the estate of a proposed protected person may occur prior to a hearing seeking establishment of a conservatorship hearing. Mirroring the provisions for an emergency guardianship, the appointment is for a period not to exceed 90 days, requires the appointment of a guardian ad litem, and notice to the person to be protected, that person's spouse, if any, and anyone else directed by the court.

Subsection 2 provides for an ex parte appointment of an emergency conservator if the court finds that substantial harm will occur before a hearing can be held. Again, mirroring the ex parte emergency appointment of a guardian, notice must then be given to the protected person, that person's spouse, if any, and anyone else the directed by court within 48 hours of the ex parte appointment and a hearing must be held within 10 days.

Subsection 3 clarifies that the appointment of the emergency conservatorship is not a finding that the person needs protection.

Subsection 4 allows the court to remove the emergency conservator at any time and require them to submit reports. The proposed language also clarifies that all other provisions of the chapter apply.

Respectfully Submitted:



Cynthia M. Feland  
District Judge  
South Central Judicial District  
Chair, Guardianship Workgroup

Guardianship Workgroup Members: Judge **Cynthia M. Feland**, Chair; Judge **Pamela Nesvig**, South Central Judicial District; Judge **Stacey Louser**, North Central Judicial District; Judge **Cherie Clark**, Southeast Judicial District; **Jon Alm**, N.D. Department of Health and Human Services; Dr. Gabriela Balf, psychiatrist; **Cheryl Bergan**, attorney, Fargo; **Jennifer Lee**, Executive Director, North Dakota Legal Services; **Thomas Jackson**, attorney, Bismarck, **Tracey Laaveg**, attorney, Park River; **Jesse Maier**, attorney, Fargo; **Mikayla Reis**, attorney, Bismarck; **Heather Krumm**, attorney, Mandan; **Lonnie Wagner**, ND Department of Veterans Affairs; **Aaron Birst**, North Dakota Association of Counties; **Donna Byzewski**, Catholic Charities; **Michelle Gayette**, N.D. Department of Health and Human Services; **Rachael Sinness**, Protection and Advocacy; **Chris Carlson**, attorney, Bismarck; **Brittany Fode**, N.D. Department of Health and Human Services; **Sally Holewa**, State Court Administrator; **Donna Wunderlich**,

Testimony Presented by Cynthia M. Feland  
District Court Judge  
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Trial Court Administrator, Unit 3; **Karen Kringlie**, Juvenile Court Director, Unit 2; **Catherine Palsgraff**, Citizen Access Coordinator; **Cathy Ferderer**, Family Law Mediation Program Administrator; **Rose Nichols**, Guardian Monitoring Program; **Norma O'Halloran**, Grand Forks County Clerk of Court's Office; **Rebecca Nelson**, Ramsey County Clerk of Court; **Scott Bernstein**, Executive Director, Guardian and Protective Services; **Diane Osland**, Lutheran Social Services of MN; **Roxane Romanick**, CEO, Designer Genes of North Dakota, Inc.; **Keith Vavrovskv**, Director of Social Services, Life Skills and Transition Center; and **Margo Haut**, Guardian Angels Inc.