

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.