JUDICIAL PROCEDURE, CIVIL

CHAPTER 274

HOUSE BILL NO. 1302

(Representative Klemin)
(Senator Nething)

AN ACT to amend and reenact section 28-01-46 of the North Dakota Century Code, relating to extension of time for serving an expert opinion affidavit in medical liability actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-01-46 of the North Dakota Century Code is amended and reenacted as follows:

28-01-46. Expert opinion required to maintain an action based upon alleged medical negligence except in obvious cases. Any action for injury or death alleging professional negligence by a physician, nurse, hospital, or nursing, basic, or assisted living facility licensed by this state or by any other health care organization, including an ambulatory surgery center or group of physicians operating a clinic or outpatient care facility, must be dismissed without prejudice on motion unless the plaintiff serves upon the defendant an affidavit containing an admissible expert opinion to support a prima facie case of professional negligence within three months of the commencement of the action. The court may set a later date for serving the affidavit for good cause shown by the plaintiff <u>if the plaintiff's request for an extension of time is made before the expiration of the three-month period following commencement of the action</u>. The expert's affidavit must identify the name and business address of the expert, indicate the expert's field of expertise, and contain a brief summary of the basis for the expert's opinion. This section does not apply to unintentional failure to remove a foreign substance from within the body of a patient, or performance of a medical procedure upon the wrong patient, organ, limb, or other part of the patient's body, or other obvious occurrence.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 275

SENATE BILL NO. 2232

(Senator Holmberg)

AN ACT to create and enact sections 28-21-03.1 and 28-21-04.2 of the North Dakota Century Code, relating to general and summary execution of judgment; and to amend and reenact sections 28-21-01, 28-21-03, 28-21-04, 28-21-04.1, 28-21-05, 28-21-05.1, 28-21-06, 28-21-07, 28-21-08, 28-21-09, 28-21-10, 28-21-13, 28-21-17, 28-21-18, and 28-23-11 of the North Dakota Century Code, relating to execution of judgment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-21-01 of the North Dakota Century Code is amended and reenacted as follows:

28-21-01. Execution at any time within ten years. ~~The party in whose favor~~ A judgment ~~has been given, and in case of~~ creditor or the party's ~~death, the party's~~ duly appointed personal representatives ~~duly appointed,~~ at any time within ten years after the entry of judgment~~,~~ may proceed to enforce the ~~same~~ judgment by execution as provided in this chapter. If the judgment creditor in a mortgage foreclosure does not proceed within sixty days after entry of judgment in the foreclosure to serve a special execution and proceed without delay to a sheriff's sale, any other lienholder or other interested person may obtain the special execution and proceed to arrange for a sheriff's sale.

SECTION 2. AMENDMENT. Section 28-21-03 of the North Dakota Century Code is amended and reenacted as follows:

28-21-03. Two kinds of execution. There ~~shall be~~ are two kinds of execution, one against the property of the judgment debtor~~,~~ and another for the delivery of the possession of ~~real or personal~~ property ~~or for such delivery with~~ and any damages for withholding the ~~same~~ property.

SECTION 3. Section 28-21-03.1 of the North Dakota Century Code is created and enacted as follows:

28-21-03.1. General execution. If the judgment requires the payment of money or the delivery of property, the judgment may be enforced by execution.

SECTION 4. AMENDMENT. Section 28-21-04 of the North Dakota Century Code is amended and reenacted as follows:

28-21-04. Special executions. ~~When a judgment requires the payment of money or the delivery of real or personal property, the judgment may be enforced in those respects by execution as provided in this chapter. When~~ If the judgment requires the sale of property, the judgment may be enforced by a ~~writ reciting such judgment, or the material parts of the judgment, and~~ special execution directing the ~~proper officer to execute the judgment by making the~~ sale and ~~applying~~ application of the proceeds in conformity with the judgment. ~~When it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or the person or officer who is required by the judgment or~~

~~by law to obey the same, and the party's, person's, or officer's obedience thereto enforced. If the party, person, or officer refuses, the party, person, or officer may be punished by the court as for contempt.~~ Real property must be sold in the county in which it is located.

SECTION 5. AMENDMENT. Section 28-21-04.1 of the North Dakota Century Code is amended and reenacted as follows:

28-21-04.1. ~~Summary execution on moneys retained pursuant to garnishment~~ Self-execution judgments. ~~When a judgment creditor proposes to execute on moneys owed to the judgment debtor by a third party who is retaining the money pursuant to garnishment, the execution must be made between twenty and three hundred sixty days after service of the garnishment summons. The execution may be served by the attorney for the judgment creditor or a sheriff, or an agent of either, through certified mail or personal service to the third party. The execution may be directed to the sheriff of any county. A transcript of the judgment need not be filed in the county of the sheriff to whom the execution is directed. Upon receipt, the third party shall remit the amount due under the garnishment to the sheriff or the attorney who shall proceed in all other respects like the sheriff making a similar execution. If the judgment debtor files a claim of exemptions under section 32-09.1-22 on or before twenty days after service of the garnishment summons, no execution may be made against moneys claimed as exempt and retained pursuant to the garnishment summons until the court determines that the moneys being garnished are not exempt.~~ If the judgment requires the performance of any act, obedience to that act may be enforced by service of a certified copy of the judgment upon the party against whom it is given, or the person who is required to obey the same. Refusal may be punished by contempt.

SECTION 6. Section 28-21-04.2 of the North Dakota Century Code is created and enacted as follows:

28-21-04.2. Summary execution on moneys retained pursuant to garnishment. If a judgment creditor proposes to execute on moneys owed to the judgment debtor by a third party who is retaining the money pursuant to garnishment, the execution must be made between twenty and three hundred sixty days after service of the garnishment summons. The execution may be served by personal service or by certified mail upon the third party by a sheriff or by an attorney licensed to practice law in this state. The execution may be directed to the sheriff of any county. A transcript of the judgment need not be filed in the county of the sheriff to whom the execution is directed. Upon receipt, the third party shall remit the amount due under the garnishment to the sheriff or the attorney who shall proceed in all other respects like the sheriff making a similar execution. If the judgment debtor files a claim of exemptions under section 32-09.1-22 within twenty days after service of the garnishment summons, an execution may not be made against moneys claimed as exempt and retained under the garnishment summons until the court determines that the moneys being garnished are not exempt.

SECTION 7. AMENDMENT. Section 28-21-05 of the North Dakota Century Code is amended and reenacted as follows:

28-21-05. Execution issued to sheriff of counties where judgment docketed. ~~When the execution is against the property~~ An execution may be issued by the clerk of ~~the judgment debtor, it may be issued~~ court in which the judgment was entered to the sheriff of any county where the judgment is docketed. ~~When it~~ If the execution requires the delivery of real or personal property, ~~it~~ the execution may be issued to the sheriff of any county where the property or ~~some part thereof~~ portion

of the property is situated. ~~An execution must be issued from the court of the county which entered the judgment, though more~~ More than one execution may be issued at the same time to the sheriffs of different counties. ~~Real property adjudged to be sold must be sold in the county where it lies by the sheriff of that county, or by a referee appointed by the court for that purpose, and thereupon the sheriff or referee must execute a certificate of sale to the purchaser as hereinafter provided. If the sheriff of the county to which the execution may be issued was a party in the action which resulted in the judgment or has an interest in any of the property against which the execution may be applied, the execution may be issued to the coroner of that county, and the coroner shall have the same power and authority to enforce the judgment by execution as provided to the sheriff in this chapter.~~

SECTION 8. AMENDMENT. Section 28-21-05.1 of the North Dakota Century Code is amended and reenacted as follows:

28-21-05.1. Levy with certified copy of judgment. A sheriff may levy upon a person's personal property upon receipt of a certified copy of judgment ~~against the person, which has been~~ docketed in any county~~, and proper notice has been given to the debtor~~ requiring payment of money or the delivery of personal property. The ~~party in whose favor the~~ judgment ~~was entered~~ creditor may also proceed to enforce the judgment by execution ~~as provided in this chapter~~.

SECTION 9. AMENDMENT. Section 28-21-06 of the North Dakota Century Code is amended and reenacted as follows:

28-21-06. Issuance and contents of execution. ~~The writ of~~ An execution must be issued in the name of the state of North Dakota, attested in the name of the judge of the court that entered the judgment, sealed with the seal of the court, subscribed by the clerk of that court, and directed and delivered to a sheriff ~~as provided in section 28-21-05. It~~. The execution must ~~refer intelligibly to~~ describe the judgment, stating the date and time the judgment was filed with the clerk, the courts and counties to which the judgment has been transcribed, the names of the parties, and the last-known address of the judgment debtor~~, the approximate age of the judgment debtor, and the date of birth of the judgment debtor if known. If the execution is against the property of a judgment debtor, the~~. A special execution must ~~also~~ state the amount of money ~~the judgment ordered the debtor to pay~~ due to the judgment creditor, the date and time the judgment was docketed by the clerk, the rate of interest applicable to ~~be used in calculating interest due on~~ the judgment ~~pursuant to section 28-20-34~~, the amount of the costs ~~accruing~~ accrued on the judgment as of the date of issuance of the execution, and if the execution is being issued to a sheriff of a different county ~~other than that of the county of the issuing writ~~, the date and time the judgment was docketed in ~~the~~ that county ~~of the sheriff to whom the execution is being issued~~. If the execution is for the delivery of the possession of ~~real or personal~~ property, the execution must also particularly describe the property to be delivered, ~~specify the value of the property,~~ identify the party entitled to possession of the property, and~~,~~ if the same judgment orders the ~~party against whom the~~ judgment ~~was rendered~~ debtor to pay any costs, damages, or rents or profits to the party entitled to possession of the property, list the amounts ~~of the costs, damages, or rents or profits payable~~ due as of the date of issuance of the execution. Upon receipt of an execution, the sheriff shall:

1. ~~If the execution is against the property of the judgment debtor, satisfy~~ Satisfy the judgment with interest and accruing costs, which include sheriff and county costs, out of the personal property of the judgment debtor, and~~,~~ if sufficient personal property cannot be found, out of the real property belonging to the debtor on the ~~day~~ date when the

judgment was docketed in the county or at any time ~~thereafter~~ after that date. If ~~real or personal~~ property of the debtor is in the hands of a personal representative, heir, devisee, legatee, tenant of real property, or trustee, the sheriff may satisfy the judgment out of that property; or

2. If the execution is for the delivery of the possession of ~~real or personal~~ property, deliver the ~~possession of the~~ property to the party entitled ~~thereto,~~ to the property and satisfy any costs, damages, or rents or profits recovered by the same judgment out of the personal property of the ~~party against whom it was rendered~~ judgment debtor and~~,~~ if sufficient personal property cannot be found, out of the real property ~~belonging to the party~~ of the judgment debtor on the ~~day~~ date when the judgment was docketed in the county or at any time ~~thereafter~~ after that date. If ~~delivery of~~ the property cannot be ~~had~~ delivered, the sheriff may satisfy the judgment in the amount of the value of the property out of the real and personal property of the ~~party~~ judgment debtor as if an execution ~~against the property of the party~~ had been issued.

SECTION 10. AMENDMENT. Section 28-21-07 of the North Dakota Century Code is amended and reenacted as follows:

28-21-07. Time of return. The execution ~~is returnable~~ must be returned to the clerk ~~with whom the record of the judgment is filed~~ within sixty days after ~~its~~ the receipt by the officer ~~and, except when~~. If a sheriff's levy has been made within the sixty days, the execution ~~is returnable to the clerk~~ must be returned within a reasonable time following the completion of the sale of the property or ninety days after ~~its~~ receipt by the officer. If a levy has been made and the issue of ownership of the property or interest ~~therein~~ in the property is raised by any party, or if the issue whether the property is exempt under chapter 28-22 is raised by either party, the court having jurisdiction may extend, for good cause shown, the execution for a reasonable time to accommodate due notice and hearing to determine these issues and to provide time for the publication of notice of sale and sale of the property subject to execution.

SECTION 11. AMENDMENT. Section 28-21-08 of the North Dakota Century Code is amended and reenacted as follows:

28-21-08. Property subject to levy - Manner of levy. ~~All goods, chattels, moneys, and other property, both real and personal, or any interest therein,~~

1. An interest in property of the judgment debtor not exempt by law~~, and all property and rights of property seized and held under attachment in the action are~~ is subject to execution. Shares and interests in any corporation or company, ~~and~~ debts and credits, and all other property~~, both real and personal, and any interest in real or personal property, and all other property~~ not capable of manual delivery~~,~~ may be taken on execution and sold as provided in this chapter. The levy under an execution must be made as follows:

~~1.~~ a. ~~Upon~~ On real property, the sheriff shall file a notice of levy with the recorder of the county in which the property is located ~~a notice of levy that~~ which has been signed by the sheriff and which states the names of the parties to the action and a description of the property.

~~2.~~ b. On personal property capable of manual delivery, the sheriff shall take the property into custody. When taking the property, the

sheriff shall deliver a copy of the execution and notice of levy to the person from whom the property was taken.

~~3.~~ c. ~~Upon~~ On money, judgments, drafts, promissory notes, or other papers of like character, by serving a copy of the execution ~~and levy~~ to the person who has custody of ~~such~~ the property, except ~~as may be provided~~ for ~~in chapter 32-09.1~~ wage garnishment.

~~4.~~ d. On other personal property, the sheriff shall leave a copy of the execution and a notice of levy ~~under an execution~~ with the person holding the property ~~or:~~.

~~a.~~ If the property consists of a right or share in the stock of a corporation or interest or profits ~~thereon~~ in the corporation, the sheriff shall leave the copy with ~~the president or other head of the corporation, or the secretary, cashier,~~ any officer or managing agent ~~thereof~~ of the corporation.

~~b.~~ If the property consists of membership interests in a limited liability company or interest or profits ~~thereon~~ in a limited liability company, the sheriff shall leave the copy with ~~the president or other head of the limited liability company or the secretary, treasurer,~~ any officer or managing agent ~~thereof~~ of the limited liability company.

2. The sheriff may elect not to seize property during the time period the debtor has to claim exemptions under chapter 28-22 or in the case of property ~~which~~ that by reason of ~~its~~ bulk or other cause cannot be removed immediately ~~and upon service~~. Service of the notice of levy ~~in accordance with~~ under this section and section 28-21-12~~, the levy~~ is as valid and effectual as if the property had been seized and the possession and control ~~thereof~~ of the property retained by the officer. The lien of the writ of execution is effectual from the time the actual levy is made ~~in accordance with~~ under this section and section 28-21-12.

SECTION 12. AMENDMENT. Section 28-21-09 of the North Dakota Century Code is amended and reenacted as follows:

28-21-09. Pledged or mortgaged property may be levied on. When property is pledged or mortgaged or is subject to a lien ~~for the payment of money or the performance of any obligation~~, the right and interest of the ~~execution~~ judgment debtor ~~therein~~ may be sold ~~on execution~~ without taking possession of or removing the property to the place of sale, but the entire right and interest of ~~such~~ the debtor in ~~all~~ the property ~~separately~~ pledged or covered by each ~~separate mortgage or~~ lien must be sold ~~together~~ as ~~a distinct~~ one parcel ~~or thing~~, and the purchaser ~~at such sale shall acquire~~ acquires all the right and interest of ~~such~~ the debtor ~~therein~~.

SECTION 13. AMENDMENT. Section 28-21-10 of the North Dakota Century Code is amended and reenacted as follows:

28-21-10. Officer's proceedings on execution. When an execution is delivered to any officer, the officer shall endorse on the execution the day and hour when the officer received ~~it~~ the execution and shall proceed to execute the execution with diligence. If executed, an exact description of the property sold ~~at length~~ with the date of the levy, sale, or other act done by virtue of the execution, including all costs incurred, must be endorsed upon or appended to the execution. If the writ was not executed, ~~it~~ the execution must be returned wholly unsatisfied with all costs

incurred endorsed upon or appended to the execution. If the writ was executed in part only, the reason along with all costs in ~~such~~ the case must be stated in the return.

SECTION 14. AMENDMENT. Section 28-21-13 of the North Dakota Century Code is amended and reenacted as follows:

28-21-13. Amount levied - When lien on personalty. The officer ~~in all cases~~ shall select ~~such~~ as nearly as practicable property ~~and~~ in ~~such~~ quantities as will be likely to bring the exact amount required to be raised ~~as nearly as practicable,~~ and ~~having made one levy, at any time thereafter~~ may make ~~other levies~~ more than one levy if the officer ~~deems it~~ determines multiple levies necessary. ~~No~~ A writ of execution is not a lien on personal property before the actual levy ~~thereof~~.

SECTION 15. AMENDMENT. Section 28-21-17 of the North Dakota Century Code is amended and reenacted as follows:

28-21-17. Execution against principal first. ~~In all cases when~~ If a judgment is rendered upon any instrument in writing in which two or more persons are severally bound, and it appears to the court ~~by parol or other testimony~~ that ~~one or more of said persons so bound~~ a person signed the same as surety or bail for that person's codefendant, the court ~~in entering judgment thereon~~ shall state which of the defendants is principal debtor and which is surety or bail. Execution issued on ~~such~~ the judgment must command the sheriff ~~or other officer~~ to cause the ~~money to be made of the personal property and real~~ property of the principal debtor~~, but for want of sufficient property of the principal debtor to make the same to cause~~ to be sold and if the proceeds from that sale are insufficient, to collect the ~~same to be made of~~ deficiency from the ~~personal and real~~ property of the surety or bail. ~~In all cases the~~ The property~~, both personal and real,~~ of the principal debtor within the jurisdiction of the court must be exhausted before any of the property of the surety or bail may be taken in execution.

SECTION 16. AMENDMENT. Section 28-21-18 of the North Dakota Century Code is amended and reenacted as follows:

28-21-18. Return of writ by mail. When execution is issued in any county and directed and delivered to the sheriff ~~or coroner~~ of another county, the sheriff ~~or coroner having the execution~~ after ~~having discharged~~ discharging all the duties required by law shall mail the execution to the clerk who issued the execution. On proof by the sheriff ~~or coroner~~ that the execution was mailed soon enough to have reached the clerk ~~prior to~~ before the execution's expiration, the sheriff ~~or coroner~~ is not liable for any penalty if the execution does not reach the office in due time.

SECTION 17. AMENDMENT. Section 28-23-11 of the North Dakota Century Code is amended and reenacted as follows:

28-23-11. Purchaser's right - Sheriff's certificate.

1. ~~Upon a sale of real property, the~~ The purchaser of real property under execution is substituted for the judgment debtor and acquires all the right, title, interest, and claim of the debtor to the property. If the estate is a leasehold less than ~~a leasehold of~~ two years' unexpired term, the sale is absolute. ~~In all other cases~~ Otherwise, the real property is subject to redemption ~~as provided in~~ under this title. The officer shall give to the purchaser a certificate of sale containing ~~a~~:

a. A particular description of the real property sold; ~~a~~

b. A statement of the price bid for each distinct lot or parcel; ~~a~~

c. A statement of the whole price paid; ~~the period of~~

d. If subject to redemption, a statement to that effect; and ~~the~~

e. The name of each plaintiff and defendant named in the foreclosure action or served in the foreclosure by the advertisement.

2. The officer shall execute the certificate and acknowledge or prove the certificate as required for deeds of real property.

Approved April 30, 2009
Filed May 1, 2009

CHAPTER 276

HOUSE BILL NO. 1039

(Legislative Council)
(Judicial Process Committee)

AN ACT to amend and reenact sections 28-22-01, 28-22-02, 28-22-03, 28-22-03.1, 28-22-05, 28-22-07, 28-22-15, 47-18-01, 47-18-04, 47-18-14, and 47-18-16 of the North Dakota Century Code, relating to exemptions from process and the homestead exemption; and to repeal section 28-22-04 of the North Dakota Century Code, relating to alternative exemptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-22-01 of the North Dakota Century Code is amended and reenacted as follows:

28-22-01. Property exempt from all process. Except as otherwise provided, the property mentioned in this chapter is exempt to the head of a family, as defined by section 28-22-01.1, from attachment, prejudgment, or other mesne process and from levy and sale upon execution and from any other final process issued from any court.

SECTION 2. AMENDMENT. Section 28-22-02 of the North Dakota Century Code is amended and reenacted as follows:

28-22-02. Absolute exemption. The property mentioned in this section is absolutely exempt from all process, levy, or sale:

1. All family pictures.

2. A pew or other sitting in any house of worship.

3. A lot or lots in any burial ground.

4. ~~The~~ One family Bible or other family primary religious text and all schoolbooks used by the family and all other books used as a part of the family library ~~not exceeding in value one hundred dollars~~.

5. All wearing apparel, not exceeding five thousand dollars in value, and all clothing of the debtor and the debtor's family.

6. The in-kind provisions for the debtor and the debtor's family necessary for one year's supply, either provided or growing, or both, and in-kind fuel necessary for heating the debtor's home or operating the debtor's motor vehicle for one year.

7. The homestead as created, defined, and limited by law.

8. All crops and grain, both threshed and unthreshed, raised by the debtor on not to exceed one hundred sixty acres [64.75 hectares] of land in one tract occupied by the debtor, either as owner or tenant, as the debtor's home, but the provisions of this subsection in no way affect seed,

thresher, or landlord liens, and if the debtor takes advantage of this subsection the debtor may not take any additional alternative exemptions provided under this chapter.

9. All insurance benefits resulting from insurance covering any or all of the absolute exemptions if the insurance benefits are in cash or have been invested in other property capable of exemption under this chapter.

10. ~~Any~~ In lieu of the homestead, and subject to the same value limitations that exist with respect to the homestead exemption, any housetrailer or mobile home occupied as a residence by the debtor or the debtor's family, except that it is not exempt from process, levy, or sale for taxes levied on it pursuant to chapter 57-55. This section does not preclude the debtor from claiming a mobile home as a dwelling house as part of the homestead.

SECTION 3. AMENDMENT. Section 28-22-03 of the North Dakota Century Code is amended and reenacted as follows:

28-22-03. Additional exemption for head of a family. In addition to the absolute exemptions mentioned in section 28-22-02, except in subsection 8 thereof, the head of a family, personally or by that person's agent, may select from that person's other personal property, any goods, chattels, merchandise, money, and other personal property not exceeding in value the sum of ~~five~~ seven thousand five hundred dollars, which also is exempt from all attachment or mesne process, levy and sale upon execution, and any other final process issued from any court. The exemption under this section may not be used to exempt a real estate interest of any kind.

SECTION 4. AMENDMENT. Section 28-22-03.1 of the North Dakota Century Code is amended and reenacted as follows:

28-22-03.1. Additional exemptions for residents. In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided by law, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars. This exemption is not available if the resident exemption claimant, the spouse of the resident exemption claimant, or other head of the family of the resident exemption claimant has chosen the homestead exemption provided for under subsection 7 of section 28-22-02.

2. A motor vehicle exemption in one vehicle not to exceed ~~one~~ two thousand ~~two~~ nine hundred fifty dollars in value over security interests and liens upon that vehicle, or a motor vehicle exemption in one vehicle not to exceed thirty-two thousand dollars for a motor vehicle that has been modified at a cost of not less than one thousand five hundred dollars to accommodate an individual with a permanent physical disability who is the owner of that motor vehicle.

3. ~~Pensions, annuity policies or plans, and life insurance policies that, upon the death of the insured, would be payable to the spouse, children, or any relative of the insured dependent, or likely to be dependent, upon the insured for support and which have been in effect for a period of at~~

~~least one year; individual retirement accounts; Keogh plans, Roth individual retirement accounts under section 408A of the Internal Revenue Code [Pub. L. 105-34; 111 Stat. 825; 26 U.S.C. 408A], and simplified employee pension plans; and all other plans qualified under section 401 of the Internal Revenue Code [Pub. L. 83-591; 68A Stat. 134; 26 U.S.C. 401], and section 408 of the Internal Revenue Code [Pub. L. 93-406; 88 Stat. 959; 26 U.S.C. 408], and pension or retirement plans sponsored by nonprofit corporations or associations organized and operated exclusively for one or more of the purposes specified in 26 U.S.C. 501(c)(3), and proceeds, surrender values, payments, and withdrawals from such pensions, policies, plans, and accounts, up to one hundred thousand dollars for each pension, policy, plan, and account with an aggregate limitation of two hundred thousand dollars for all pensions, policies, plans, and accounts.~~ The debtor's aggregate interest, not to exceed one thousand five hundred dollars in value, in any tools, implements, or professional books of the trade of the debtor or the trade of a dependent of the debtor.

4. Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

5. The debtor's aggregate interest, not to exceed in value eight thousand dollars less any amount of property transferred in the manner specified in 11 U.S.C. 542(d), in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

6. Professionally prescribed health aids for the debtor or a dependent of the debtor.

7. Retirement funds that have been in effect for at least one year, to the extent those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986. The value of those assets exempted may not exceed one hundred thousand dollars for any one account or two hundred thousand dollars in aggregate for all accounts. The dollar limit does not apply to the extent this property is reasonably necessary for the support of the resident and that resident's dependents~~, except that the pensions, policies, plans, and accounts or proceeds, surrender values, payments, and withdrawals~~. Retirement funds are not exempt from enforcement of any order to pay spousal support or child support, or a qualified domestic relations order under sections 15-39.1-12.2, 39-03.1-14.2, and 54-52-17.6. As used in this subsection, "reasonably necessary for the support" means required to meet present and future needs, as determined by the court after consideration of the resident's responsibilities and all the present and anticipated property and income of the resident, including that which is exempt.

~~4.~~ 8. The debtor's right to receive~~, or property that is traceable to~~:

a. ~~A payment, not to exceed fifteen thousand dollars, on account of the wrongful death of an individual of whom the debtor was a dependent.~~

~~b. A payment, not to exceed fifteen thousand dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.~~

~~c.~~ A social security benefit, except that the benefit is not exempt for enforcement of any order for the support of a dependent child.

~~d.~~ b. Veteran's disability pension benefits, not including military retirement pay, except that the benefits are not exempt from process levy or sale for enforcement of any order for the support of a dependent child.

c. A disability, illness, or unemployment benefit.

d. Alimony, support, or separate maintenance, but not property settlements, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

e. A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless:

(1) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under that plan or contract arose;

(2) That payment is on account of age or length of service; and

(3) That plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

9. The debtor's right to receive, or property that is traceable to:

a. An award under a crime victim's reparation law.

b. A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

c. A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

d. A payment, not to exceed eighteen thousand four hundred fifty dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

e. A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

SECTION 5. AMENDMENT. Section 28-22-05 of the North Dakota Century Code is amended and reenacted as follows:

28-22-05. Exemptions of ~~a~~ ~~single~~ an unmarried person without dependents. In addition to the absolute exemptions mentioned in section 28-22-02, except in subsection 8 thereof, ~~a~~ ~~single~~ an unmarried person without any dependents, in person or by that person's agent, may select from that person's other personal property, goods, chattels, merchandise, money, or other personal property not exceeding in value the sum of ~~two~~ three thousand ~~five~~ seven hundred fifty dollars, which is exempt.

SECTION 6. AMENDMENT. Section 28-22-07 of the North Dakota Century Code is amended and reenacted as follows:

28-22-07. How exemptions claimed - Appraisal. All property claimed as exempt must be selected by the debtor or the debtor's agent or attorney regardless of whether levy has been made yet on the property by the sheriff or levying officer. Failure to claim all exempt property at the time exemptions are claimed renders the unclaimed property nonexempt for purposes of this chapter. The value thereof, when material, must be determined by an appraisement made under the direction of the sheriff or other officer. Whenever any debtor, against whom an execution, writ of attachment, or other process has been issued, desires to claim the benefit of section 28-22-03, such debtor or the debtor's agent or attorney, shall make a schedule of all of the debtor's personal property of every kind and character, including money on hand and debts due and owing to the debtor, and shall deliver the same to the officer having the execution, writ of attachment, or other process. The schedule must be subscribed and sworn to by the debtor or the debtor's agent or attorney, and any property owned by the debtor and not included in such schedule is not exempt. No claim for exemptions may be disallowed for insufficiency as to form unless three days' notice in writing has been given first of the insufficiency by the party in interest claiming such insufficiency to the person making the claim for exemptions, and specifying in apt language the defect complained of. The person claiming the exemption thereupon may amend the same to conform to the objections made within three days, if that person desires so to do, by serving upon the proper person an amended claim for exemptions.

SECTION 7. AMENDMENT. Section 28-22-15 of the North Dakota Century Code is amended and reenacted as follows:

28-22-15. When only absolute exemptions allowed. Only absolute exemptions may be allowed against process:

1. For the wages of a laborer or mechanic who is, or had been, employed by the judgment debtor;

2. Upon a debt incurred for property obtained under false pretenses;

3. For fines, penalties, or costs of criminal prosecutions;

4. ~~Against a corporation for profit or limited liability company;~~

~~5.~~ Against a nonresident;

~~6.~~ 5. Against a debtor who is in the act of removing with the debtor's family from the state; or

~~7.~~ 6. Against a debtor who has absconded, taking the debtor's family along.

SECTION 8. AMENDMENT. Section 47-18-01 of the North Dakota Century Code is amended and reenacted as follows:

47-18-01. Homestead exemption - Area and value. The homestead of any ~~person~~ individual, whether married or unmarried, residing in this state ~~shall consist~~ consists of the land upon which the claimant resides, and the dwelling house on that land in which the homestead claimant resides, with all its appurtenances, and all other improvements on the land, the total not to exceed ~~eighty~~ one hundred thousand dollars in value, over and above liens or encumbrances or both. The homestead shall be exempt from judgment lien and from execution or forced sale, except as otherwise provided in this chapter. ~~In no case shall the~~ The homestead may not embrace different lots or tracts of land unless ~~they~~ the lots or tracts of land are contiguous. For purposes of this section, "contiguous" means two or more tracts of real property which share a common point or which would share a common point but for an intervening road or right of way.

[123] **SECTION 9. AMENDMENT.** Section 47-18-04 of the North Dakota Century Code is amended and reenacted as follows:

47-18-04. When homestead subject to execution. A homestead is subject to execution or forced sale in satisfaction of judgments obtained in the following cases:

1. On debts secured by mechanics' or laborers' liens for work or labor done or performed or material furnished exclusively for the improvement of the same.

2. On debts secured by mortgage on the premises executed and acknowledged by both husband and wife, or an unmarried claimant.

3. On debts created for the purchase thereof and for all taxes accruing and levied thereon.

4. On all other debts when, upon an appraisal as provided by section 47-18-06, it appears that the value of ~~said~~ the homestead is more than ~~eighty~~ one hundred thousand dollars over and above liens or encumbrances thereon, and then only to the extent of any value in excess of the sum total of ~~such~~ the liens and encumbrances plus said ~~eighty~~ one hundred thousand dollars.

SECTION 10. AMENDMENT. Section 47-18-14 of the North Dakota Century Code is amended and reenacted as follows:

47-18-14. Proceeds of sale exempt - Disposition. If the sale of a homestead is made as provided in section 47-18-13, the proceeds thereof to the amount of the homestead exemption must be paid to the claimant and the residue applied to the satisfaction of the execution. When the execution is against a married claimant whose spouse is living, the court may direct that the ~~eighty~~ one hundred

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[123] Section 47-18-04 was also amended by section 15 of Senate Bill No. 2250, chapter 293.

thousand dollars be deposited in court to be paid out only on the joint receipt of the husband and wife, and it shall possess all the protection against legal process and voluntary disposition by either spouse as did the original homestead premises whether paid directly to the claimant or to the husband and wife jointly.

SECTION 11. AMENDMENT. Section 47-18-16 of the North Dakota Century Code is amended and reenacted as follows:

47-18-16. Proceeds of sale exempt. If a homestead is conveyed as provided in section 47-18-05 or sold for the satisfaction of any lien mentioned in section 47-18-04, the price thereof or the proceeds of the sale beyond the amount necessary to satisfy such lien, and not exceeding in either case the amount of the homestead exemption, ~~shall be~~ for a period of one year from the date of the conveyance, is entitled thereafter to the same protection against legal process as the law gives to the homestead.

SECTION 12. REPEAL. Section 28-22-04 of the North Dakota Century Code is repealed.

Approved April 24, 2009
Filed April 29, 2009

CHAPTER 277

SENATE BILL NO. 2026

(Legislative Council)
(Administrative Rules Committee)

AN ACT to amend and reenact section 28-32-15 of the North Dakota Century Code, relating to filing dates for administrative rules; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[124] **SECTION 1. AMENDMENT.** Section 28-32-15 of the North Dakota Century Code is amended and reenacted as follows:

28-32-15. Filing of rules for publication - Effective date of rules.

1. A copy of each rule adopted by an administrative agency, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion on the rule must be filed by the adopting agency with the office of the legislative council for publication of the rule in the North Dakota Administrative Code.

2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council and not voided or held for consideration by the administrative rules committee become effective according to the following schedule:

   (1) Rules filed with the legislative council from August ~~sixteenth~~ second through November ~~fifteenth~~ first become effective on the immediately succeeding January first.

   (2) Rules filed with the legislative council from November ~~sixteenth~~ second through February ~~fifteenth~~ first become effective on the immediately succeeding April first.

   (3) Rules filed with the legislative council from February ~~sixteenth~~ second through May ~~fifteenth~~ first become effective on the immediately succeeding July first.

   (4) Rules filed with the legislative council from May ~~sixteenth~~ second through August ~~fifteenth~~ first become effective on the immediately succeeding October first.

   b. If publication is delayed for any reason other than action of the administrative rules committee, nonemergency rules, unless

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[124] Section 28-32-15 was also amended by section 24 of House Bill No. 1436, chapter 482.

otherwise provided, become effective when publication would have occurred but for the delay.

c. A rule held for consideration by the administrative rules committee becomes effective on the first effective date of rules under the schedule in subdivision a following the meeting at which that rule is reconsidered by the committee.

SECTION 2. EFFECTIVE DATE. This Act is effective for rules filed with the legislative council after July 31, 2009.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 278

SENATE BILL NO. 2074

(Judiciary Committee)
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 28-35 of the North Dakota Century Code, relating to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act; to repeal sections 30.1-29-02 and 30.1-29-32 of the North Dakota Century Code, relating to the jurisdiction of protective proceedings; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 28-35 of the North Dakota Century Code is created and enacted as follows:

28-35-01. (102) Definitions. In this chapter:

1. "Adult" means an individual who has attained eighteen years of age.

2. "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under chapter 30.1-29.

3. "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under chapter 30.1-28.

4. "Guardianship order" means an order appointing a guardian.

5. "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

6. "Incapacitated person" means an adult for whom a guardian has been appointed.

7. "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

8. "Person", except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

9. "Protected person" means an adult for whom a protective order has been issued.

10. "Protective order" means an order appointing a conservator or other order related to management of an adult's property.

11. "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

12. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

13. "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

14. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

28-35-02. (103) International application of chapter. A court of this state may treat a foreign country as if it were a state for the purpose of applying sections 28-35-01, 28-35-02, 28-35-03, 28-35-04, 28-35-05, 28-35-06, 28-35-07, 28-35-08, 28-35-09, 28-35-10, 28-35-11, 28-35-12, 28-35-13, 28-35-14, 28-35-15, 28-35-16, and 28-35-20.

28-35-03. (104) Communication between courts.

1. A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection 2, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

2. Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

28-35-04. (105) Cooperation between courts.

1. In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

   a. Hold an evidentiary hearing;

   b. Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

   c. Order that an evaluation or assessment be made of the respondent;

   d. Order any appropriate investigation of a person involved in a proceeding;

   e. Forward to the court of this state a certified copy of the transcript or other record of a hearing under subdivision a or any other proceeding, any evidence otherwise produced under subdivision b, and any evaluation or assessment prepared in compliance with an order under subdivision c or d;

f. Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; or

g. Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in title 45, Code of Federal Regulations, part 164, section 504.

2. If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection 1, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

28-35-05. (106) Taking testimony in another state.

1. In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

2. In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

3. Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

28-35-06. (201) Definitions - Significant connection factors.

1. In sections 28-35-06, 28-35-07, 28-35-08, 28-35-09, 28-35-10, 28-35-11, 28-35-12, 28-35-13, and 28-35-14:

a. "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

b. "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

c. "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

2. In determining under sections 28-35-08 and subsection 5 of section 28-35-15 whether a respondent has a significant connection with a particular state, the court shall consider:

a. The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

b. The length of time the respondent at any time was physically present in the state and the duration of any absence;

c. The location of the respondent's property; and

d. The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

28-35-07. (202) Exclusive basis. Sections 28-35-06, 28-35-07, 28-35-08, 28-35-09, 28-35-10, 28-35-11, 28-35-12, 28-35-13, and 28-35-14 provide the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

28-35-08. (203) Jurisdiction. A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

1. This state is the respondent's home state;

2. On the date the petition is filed, this state is a significant-connection state and:

a. The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

b. The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(1) A petition for an appointment or order is not filed in the respondent's home state;

(2) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(3) The court in this state concludes that it is an appropriate forum under the factors set forth in section 28-35-11;

3. This state does not have jurisdiction under either subsection 1 or 2, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more

appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

4. The requirements for special jurisdiction under section 28-35-09 are met.

28-35-09. (204) Special jurisdiction.

1. A court of this state lacking jurisdiction under section 28-35-08 has special jurisdiction to do any of the following:

   a. Appoint a guardian in an emergency for a term not exceeding ninety days for a respondent who is physically present in this state;

   b. Issue a protective order with respect to real or tangible personal property located in this state; or

   c. Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 28-35-15.

2. If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

28-35-10. (205) Exclusive and continuing jurisdiction. Except as otherwise provided in section 28-35-09, a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until the appointment or order is terminated by the court or the appointment or order expires by its own terms.

28-35-11. (206) Appropriate forum.

1. A court of this state having jurisdiction under section 28-35-08 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if the court determines at any time that a court of another state is a more appropriate forum.

2. If a court of this state declines to exercise its jurisdiction under subsection 1, the court shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

3. In determining whether a court is an appropriate forum, the court shall consider all relevant factors, including:

   a. Any expressed preference of the respondent;

   b. Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

c. The length of time the respondent was physically present in or was a legal resident of this or another state;

d. The distance of the respondent from the court in each state;

e. The financial circumstances of the respondent's estate;

f. The nature and location of the evidence;

g. The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

h. The familiarity of the court of each state with the facts and issues in the proceeding; and

i. If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

28-35-12. (207) Jurisdiction declined by reason of conduct.

1. If at any time a court of this state determines that the court acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

   a. Decline to exercise jurisdiction;

   b. Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

   c. Continue to exercise jurisdiction after considering:

      (1) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

      (2) Whether it is a more appropriate forum than the court of any other state under the factors set forth in subsection 3 of section 28-35-11; and

      (3) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 28-35-09.

2. If a court of this state determines that the court acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, the court may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or

a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this chapter.

28-35-13. (208) Notice of proceeding. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

28-35-14. (209) Proceedings in more than one state. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under subdivision a or b of subsection 1 of section 28-35-09, if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

1. If the court in this state has jurisdiction under section 28-35-08, the court may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 28-35-09 before the appointment or issuance of the order.

2. If the court in this state does not have jurisdiction under section 28-35-08, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

28-35-15. (301) Transfer of guardianship or conservatorship to another state.

1. A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

2. Notice of a petition under subsection 1 must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

3. On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection 1.

4. The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

   a. The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

b. An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

c. Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

5. The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

a. The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in subsection 2 of section 28-35-06;

b. An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

c. Adequate arrangements will be made for management of the protected person's property.

6. The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

a. A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 28-35-16; and

b. The documents required to terminate a guardianship or conservatorship in this state.

28-35-16. (302) Accepting guardianship or conservatorship transferred from another state.

1. To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to section 28-35-15, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

2. Notice of a petition under subsection 1 must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

3. On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection 1.

4. The court shall issue an order provisionally granting a petition filed under subsection 1 unless:

   a. An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

   b. The guardian or conservator is ineligible for appointment in this state.

5. The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon the court's receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 28-35-15 transferring the proceeding to this state.

6. No later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

7. In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

8. The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under chapter 30.1-28 or 30.1-29 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

28-35-17. (401) Registration of guardianship orders. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgement in a court, in any appropriate county of this state, certified copies of the order and letters of office.

28-35-18. (402) Registration of protective orders. If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

28-35-19. (403) Effect of registration.

1. Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

2. A court of this state may grant any relief available under this chapter and other law of this state to enforce a registered order.

28-35-20. (502) Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.], but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)], or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

SECTION 2. REPEAL. Sections 30.1-29-02 and 30.1-29-32 of the North Dakota Century Code are repealed.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act applies to guardianship and protective proceedings begun after July 31, 2009. Sections 28-35-01 through 28-35-05 and sections 28-35-15 through 28-35-20 apply to proceedings begun before August 1, 2009, regardless of whether a guardianship or protective order has been issued.

Approved March 19, 2009
Filed March 19, 2009