Sixty-third
Legislative Assembly
of North Dakota

FIRST DRAFT:
Prepared by the Legislative Council staff for the
Human Services Committee
August 2012

Introduced by

A BILL for an Act to create and enact section 30.1-28-10.1 of the North Dakota Century Code, relating to the appointment of an emergency guardian; to amend and reenact section 30.1-28-09 of the North Dakota Century Code, relating to requirements of guardianship proceedings; and to repeal section 30.1-28-10 of the North Dakota Century Code, relating to the appointment of temporary guardians.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-28-09 of the North Dakota Century Code is amended and reenacted as follows:

30.1-28-09. (5-309) Notices in guardianship proceedings.

1. In a proceeding for the appointment or removal of a guardian or for an alteration or termination of a guardianship other than for the appointment of ~~a temporary~~an emergency guardian or for the temporary suspension of a guardian, notice of hearing shall be given to each of the following:
   a. The ward or the proposed ward and the ward's or proposed ward's spouse, parents, and adult children;
   b. Any person, corporation, or institution who is serving as the ward's guardian, attorney in fact, representative payee for public benefits, or conservator, or who has the ward's care and custody;
   c. If no other person is notified under subdivision a, then the adult siblings and any adult with whom the proposed ward resides in a private residence, or if none can be found, any known adult relative; and
   d. The attorney for the proposed ward, the visitor, and the physician or clinical psychologist, together with a copy of the respective order of appointment for each.

2. Notice must be served personally on the ward or proposed ward, and the ward's or proposed ward's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the ward or proposed ward must be given as provided in section 30.1-03-01. Waiver of notice by the ward or proposed ward is not effective unless the ward or proposed ward attends the hearing or the ward's or proposed ward's waiver of notice is confirmed in an interview with the visitor.

3. The notice must be printed with not less than double-spaced twelve-point type. The notice must inform the ward or proposed ward of the ward's or proposed ward's rights at the hearing and must include a description of the nature, purpose, and consequences of an appointment of a guardian.

SECTION 2. Section 30.1-28-10.1 of the North Dakota Century Code is created and enacted as follows:

30.1-28-10.1. Emergency guardian.

1. If the court finds that compliance with the procedures of this chapter likely will result in substantial harm to the alleged incapacitated individual's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances, the court, on petition by a person interested in the alleged incapacitated individual's welfare, may appoint an emergency guardian whose authority may not exceed sixty days and who may exercise only the powers specified in the order. Immediately upon receipt of the petition for an emergency guardianship, the court shall appoint an attorney to represent the alleged incapacitated individual in the proceeding. Except as otherwise provided in subsection 2, reasonable notice of the time and place of a hearing on the petition must be given to the alleged incapacitated individual and any other person as the court directs.

2. An emergency guardian may be appointed without notice to the alleged incapacitated individual and the alleged incapacitated individual's attorney only if the court finds from affidavit or other sworn testimony that the alleged incapacitated individual will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice to the alleged incapacitated individual, the alleged incapacitated individual must be given notice of the appointment within

1 forty-eight hours after the appointment. The court shall hold a hearing on the
2 appropriateness of the appointment within five days after the appointment.
3 3. Appointment of an emergency guardian, with or without notice, is not a determination
4 of the alleged incapacitated individual's incapacity.
5 4. The court may remove an emergency guardian at any time. An emergency guardian
6 shall make any report the court requires. In all other respects, the provisions of this
7 chapter concerning guardians apply to an emergency guardian.
8 **SECTION 3. REPEAL**. Section 30.1-28-10 of the North Dakota Century Code is repealed.