



## 2023 South Dakota Legislature

# House Bill 1240

SENATE JUDICIARY ENGROSSED

Introduced by: **Representative Mulder**

1 **An Act to amend provisions addressing guardianships and conservatorships.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 29A-5-304 be AMENDED:**

4 **29A-5-304.** Any individual who has sufficient capacity to form a preference may  
 5 at any time nominate any individual or entity to act as his guardian or conservator. The  
 6 nomination may be made in writing, by an oral request to the court, or may be proved by  
 7 any other competent evidence. The court shall appoint the individual or entity so  
 8 nominated if the nominee is otherwise eligible to act and would serve in the best interests  
 9 of the protected person. If a person alleged to be in need of protection has designated an  
 10 individual to serve as guardian or conservator under a validly executed legal instrument,  
 11 including a power of attorney, and the court does not appoint the designated individual,  
 12 the court shall issue written findings of fact and conclusions of law as to why the  
 13 designated individual was not appointed.

14 In the absence of an effective nomination by the protected person, the court shall  
 15 appoint as guardian or conservator the individual or entity that will act in the protected  
 16 person's best interests. In making that appointment, the court shall consider the proposed  
 17 guardian's or conservator's geographic location, familial or other relationship with the  
 18 protected person, ability to carry out the powers and duties of the office, commitment to  
 19 promoting the protected person's welfare, any potential conflicts of interest, and the  
 20 recommendations of the spouse, the parents or other interested relatives, whether made  
 21 by will or otherwise. The court may appoint more than one guardian or conservator and  
 22 need not appoint the same individual or entity to serve as both guardian and conservator.

23 **Section 2. That § 29A-5-309 be AMENDED:**

24 **29A-5-309.** The court shall appoint an attorney for the person alleged to need  
 25 protection, either upon the filing of the petition or at any time thereafter, if requested by

1 the person alleged to need protection, if the person expresses a desire to contest the  
2 petition, or if the court determines that an appointment is otherwise needed to protect  
3 the person's interests. In appointing an attorney, the court shall consider any known  
4 preferences of the person alleged to need protection.

5 If the person alleged to need protection is not or will not be represented by an  
6 attorney, the court shall either appoint a court representative to make an investigation  
7 and recommendation concerning the relief requested in the petition, or shall order the  
8 person alleged to need protection to attend the hearing on the petition.

9 If the basis of the petition is that the person alleged to need protection is an  
10 absentee, the court shall appoint an attorney if the court determines that an appointment  
11 is needed to protect the person's interests, but the court need not appoint a court  
12 representative or order attendance at the hearing.

13 In addition to any court-ordered evaluation, a person alleged to need protection  
14 who is contesting a petition may obtain an evaluation at the person's own expense to be  
15 completed by a licensed healthcare professional of the person's choice in accordance with  
16 § 29A-5-306, which must be included in the file and considered by the court.

17 **Section 3. That § 29A-5-403 be AMENDED:**

18 **29A-5-403.** A guardian of a protected person shall file a report with the court  
19 within sixty days following the first anniversary of the appointment and:

- 20 (1) At least annually thereafter;  
21 (2) When the court orders additional reports to be filed;  
22 (3) When the guardian resigns or is removed; and  
23 (4) When the guardianship is terminated unless the court determines that there is then  
24 no need therefor.

25 A guardian may elect to file a periodic report on a calendar-year basis. However,  
26 in no event may such a report cover a period of more than one year. A calendar-year  
27 report shall be filed with the court no later than April fifteenth of the succeeding year.

28 A report shall briefly state:

- 29 (1) The current mental, physical and social condition of the protected person;  
30 (2) The living arrangements during the reporting period;  
31 (3) The medical, educational, vocational and other professional services provided to  
32 the protected person and the guardian's opinion as to the adequacy of the  
33 protected person's care;

- 1 (4) A summary of the guardian's visits with and activities on the protected person's  
2 behalf;
- 3 (5) If the protected person is institutionalized, whether the guardian agrees with the  
4 current treatment or habilitation plan;
- 5 (6) A recommendation as to the need for continued guardianship and any  
6 recommended changes in the scope of the guardianship;
- 7 (7) Any other information requested by the court or useful in the opinion of the  
8 guardian;
- 9 (8) The compensation requested and the reasonable and necessary expenses incurred  
10 by the guardian; and
- 11 (9) The date on which the guardian completed the training curricula required pursuant  
12 to § 29A-5-119.

13 A guardian shall mail a copy of the report to the individuals and entities specified  
14 in § 29A-5-410 no later than fourteen days following its filing.

15 ~~Any~~Within sixty days of the filing of the annual report, any interested person may  
16 request a hearing on the report. The court may order the guardian to attend the hearing  
17 on the report on the court's own motion or on the petition of any interested person. A  
18 report of the guardian may be incorporated into and made a part of the accounting of the  
19 conservator if the same individual holds both appointments.

20 **Section 4. That § 29A-5-408 be AMENDED:**

21 **29A-5-408.** A conservator shall file an accounting with the court within sixty days  
22 following the first anniversary of the appointment and:

- 23 (1) At least annually thereafter;
- 24 (2) When the court orders additional accounts to be filed;
- 25 (3) When the conservator resigns or is removed; and
- 26 (4) When the conservatorship is terminated.

27 A conservator may elect to file a periodic accounting on a calendar-year basis.  
28 However, in no event may such an accounting cover a period of more than one year. A  
29 calendar-year report shall be filed with the court no later than April fifteenth of the  
30 succeeding year.

31 An accounting shall include:

- 32 (1) A listing of the receipts, disbursements, and distributions from the estate under  
33 the conservator's control during the period covered by the account;
- 34 (2) A listing of the estate;

- 1 (3) The services being provided to the protected person;
- 2 (4) The significant actions taken by the conservator during the reporting period;
- 3 (5) A recommendation as to the continued need for conservatorship and any  
4 recommended changes in the scope of the conservatorship;
- 5 (6) Any other information requested by the court or useful in the opinion of the  
6 conservator;
- 7 (7) The compensation requested and the reasonable and necessary expenses incurred  
8 by the conservator;
- 9 (8) An annual inventory of any item of tangible personal property with a value of two  
10 thousand five hundred dollars or more which has come into the conservator's  
11 possession or knowledge for the minor or protected person; and
- 12 (9) The date on which the conservator completed the training curricula required  
13 pursuant to § 29A-5-119.

14 A conservator shall mail a copy of the accounting to the individuals and entities  
15 specified in § 29A-5-410 no later than fourteen days following its filing. A conservator  
16 shall notify all persons receiving the accounting that they must present written objections  
17 within ~~fourteen~~sixty days after receipt or be barred from thereafter objecting.

18 Upon filing an objection, any interested person may request a hearing on the  
19 accounting. The court may order the conservator to attend the hearing on an account on  
20 the court's own motion or on the petition of any interested person. An accounting by a  
21 conservator may be incorporated into and made a part of the report of the guardian if the  
22 same individual holds both appointments.

23 Subject to written objection, appeal, or vacation within the time permitted, an  
24 order allowing an account of a conservator adjudicates as to liabilities concerning all  
25 matters disclosed in the account.

26 **Section 5. That chapter 29A-5 be amended with a NEW SECTION:**

27 The court must grant an interested person access to some or all of a protected  
28 person's medical or financial records if, on the motion of the interested person, the court  
29 finds access is in the best interest of the protected person. If the court does not grant  
30 access, the court must issue written findings of fact and conclusions of law as to why the  
31 medical or financial records access was not granted.

32 **Section 6. That chapter 29A-5 be amended with a NEW SECTION:**

1           If the court receives any verbal or written communication from a protected person  
2           alleging that a guardian or conservator is abusing or neglecting the protected person or is  
3           engaging in self-dealing with respect to the protected person's property, or the  
4           guardianship or conservatorship is no longer necessary and should be terminated, and the  
5           communication contains credible and substantial evidence, which in context of the entire  
6           record, supports the allegation, the court must treat the communication as a petition  
7           under § 29A-5-504.