Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019

SENATE BILL NO. 2289
(Senators J. Lee, Hogan, Poolman)
(Representatives Beadle, Dockter)

AN ACT to create and enact chapter 50-25.3 of the North Dakota Century Code, relating to family visitation rights.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 50-25.3 of the North Dakota Century Code is created and enacted as follows:

50-25.3-01. Definitions.

As used in this chapter:

1. "Caregiver" means a person that has assumed the legal responsibility or a contractual obligation for the care of a vulnerable adult or has voluntarily assumed responsibility for the care of a vulnerable adult. The term includes a facility operated by a public or private agency, organization, or institution which provides services to, and has assumed responsibility for the care of, a vulnerable adult.

2. "Clergy member" means a member of the clergy or spiritual counselor who has provided a vulnerable adult with religious or spiritual care or who represents a religious organization to which a vulnerable adult is a member.

3. "Family member" means an individual related by blood, marriage, or adoption to a vulnerable adult.

4. "Friend" means an individual who is in a dating relationship with a vulnerable adult or any other individual with whom a vulnerable adult has an established relationship.

5. "Substantial functional impairment" means, because of physical limitations, a substantial incapability of living independently or providing self-care as determined through observation, diagnosis, evaluation, or assessment.

6. "Substantial mental impairment" means a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, or ability to live independently or provide self-care as revealed by observation, diagnosis, evaluation, or assessment.

7. "Vulnerable adult" means an adult who has a substantial mental or functional impairment or an adult who is experiencing visitation restrictions while under the care of a caregiver.

50-25.3-02. Visitation of a vulnerable adult by family members, friends, or clergy member.

A caregiver may not unreasonably or arbitrarily deny or restrict visitation to a family member, friend, or clergy member or communication or interaction between a vulnerable adult and a family member, friend, or clergy member.

50-25.3-03. Petition for visitation.

1. A family member, friend, or clergy member who has had visitation unreasonably or arbitrarily denied or restricted by a caregiver may file with the district court located in the county wherein the vulnerable adult resides a petition to compel visitation.

2. The petition must state:

   a. The petitioner's relationship to the vulnerable adult;

   b. Whether the caregiver is unreasonably or arbitrarily denying or restricting visitation between the petitioner and the vulnerable adult; and

   c. The facts supporting the petitioner's allegation that the caregiver is unreasonably or arbitrarily denying or restricting visitation between the petitioner and the vulnerable adult.

3. The court shall fix a time and place for hearing the petition. At least twenty days before the date of hearing, the petitioner shall provide to the caregiver, vulnerable adult and other interested parties notice of the filing of the petition and of the time and place of hearing.

4. The court shall conduct an in camera interview of the vulnerable adult to determine the wishes of the vulnerable adult. The in camera interview may be on the record. The court shall give deference to the vulnerable adult's preference in making decisions.

5. The court may not issue an order compelling visitation if the court finds the vulnerable adult, while having the capacity to evaluate and communicate decisions regarding visitation, expresses a desire to not have visitation with the petitioner.

6. If the court grants the petition for visitation, the court may impose conditions on visitation between the petitioner and the vulnerable adult after consultation with the vulnerable adult and based on the minimum visitation necessary to allow the vulnerable adult to maintain maximum self-reliance and independence. The petitioner is responsible for paying costs associated with the visitation, including transportation and supervision costs. Visitation may not occur in a manner that negatively impacts the medical or treatment needs of the vulnerable adult.

7. The court may prohibit contact between the petitioner and the vulnerable adult when contact is not in the best interest of the vulnerable adult.

8. The court shall impose the cost of filing the petition for visitation and reasonable attorney's fees incurred by the petitioner on the caregiver, if the court finds during a hearing under this section that:

   a. The caregiver unreasonably or arbitrarily denied or restricted visitation to a family member, friend, or clergy member; and

   b. The caregiver denied or restricted visitation between the petitioner and the vulnerable adult in bad faith.

9. The court may not impose costs or fees under subsection 6 on the vulnerable adult or a caregiver that in good faith denied or restricted visitation to a family member, friend, or clergy member. Costs, fees, or other sanctions imposed under subsection 6 may not be paid from the vulnerable adult's finances or estate.

50-25.3-04. Expedited hearing.

If a petition for visitation states the vulnerable adult's health is in significant decline or the vulnerable adult's death may be imminent, the court shall conduct an emergency hearing on the petition as soon as practicable and no later than fourteen days after the date the petition is filed with the court, or at a later date upon a showing of good cause.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2289.

Senate Vote:	Yeas 46	Nays 0	Absent 1
House Vote:	Yeas 86	Nays 0	Absent 8

Secretary of the Senate

Received by the Governor at 3:52 P.M. on March 19, 2019.

Approved at 9:56 P.M. on March 21, 2019.

Governor

Filed in this office this 22nd day of March, 2019,

at 10:11 o'clock A. M.

Secretary of State