

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH10246-SWz-33* (3/29)

Short Title: Legislative Study Comm./Guardianship. (Public)

Sponsors: Representatives Nye, Weiss, and G. Wilson (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE LEGISLATIVE STUDY COMMISSION ON STATE
GUARDIANSHIP LAWS, AS RECOMMENDED BY THE NORTH CAROLINA
STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1.(a) There is created the Legislative Study Commission on State Guardianship Laws. The purpose of the Commission is to review State law pertaining to guardianship and its relationship to other pertinent State laws such as the health care power of attorney, the right to a natural death, and durable power of attorney.

SECTION 1.(b) The Commission shall consist of 15 members as follows:

- (1) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (2) Four members of the Senate appointed by the President Pro Tempore of the Senate.
- (3) The Director of the Administrative Office of the Courts, or the Director's designee.
- (4) The Director of the Division of Aging in the Department of Health and Human Services, or the Director's designee.
- (5) A county director of social services appointed by the President Pro Tempore of the Senate.
- (6) A clerk of superior court appointed by the Speaker of the House of Representatives.
- (7) A physician who specializes in geriatrics appointed by the President Pro Tempore of the Senate.
- (8) An attorney who has experience in guardianship matters appointed by the Speaker of the House of Representatives.

1 (9) A representative of the Governor's Advocacy Council for Persons
2 With Disabilities.

3 In addition, representatives designated by the following organizations shall
4 serve as ex-officio, nonvoting members of the Commission:

- 5 (1) The North Carolina Bar Association.
- 6 (2) The Arc of North Carolina.
- 7 (3) North Carolina Guardianship Association.
- 8 (4) Alzheimer's Association – Western Chapter.
- 9 (5) Alzheimer's Association – Eastern Chapter.
- 10 (6) Carolina Legal Assistance.
- 11 (7) The Area Agencies on Aging.
- 12 (8) County Departments of Aging.

13 The Speaker of the House of Representatives shall designate one
14 representative as cochair, and the President Pro Tempore shall designate one senator as
15 cochair. Vacancies on the Commission shall be filled by the same appointing authority
16 as made the initial appointment. The Commission shall expire upon delivering its final
17 report.

18 The Commission, while in the discharge of its official duties, may exercise all
19 powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The
20 Commission may meet at any time upon the joint call of the cochairs. The Commission
21 may meet in the Legislative Building or the Legislative Office Building. The
22 Commission may contract for professional, clerical, or consultant services as provided
23 by G.S. 120-32.02.

24 The Legislative Services Commission, through the Legislative Services
25 Officer, shall assign professional staff to assist the Commission in its work. The House
26 of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to
27 the Commission, and the expenses relating to the clerical employees shall be borne by
28 the Commission. Members of the Commission shall receive subsistence and travel
29 expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

30 **SECTION 1.(c)** In conducting the study, the Commission shall consider the
31 following:

- 32 (1) Whether guardianship should be a remedy of last resort used only if
33 less restrictive alternatives are insufficient.
- 34 (2) The definition of incompetency.
- 35 (3) Whether courts should be required to make express findings regarding
36 the extent of a person's incapacity and limit the scope of the
37 guardianship accordingly.
- 38 (4) Legal rights retained or lost as a result of being adjudicated
39 incompetent.
- 40 (5) The proper role of attorneys and guardians ad litem in guardianship
41 proceedings.
- 42 (6) The role of public human services agencies in providing guardianship
43 services.
- 44 (7) Legal procedures and protections in guardianship proceedings.

- 1 (8) Public monitoring of guardianship.
2 (9) Funding for guardianship services provided by public and nonprofit
3 agencies.
4 (10) Educating citizens with respect to guardianship and alternatives to
5 guardianship.
6 (11) Prudent investor rules.
7 (12) Powers, duties, and liabilities of guardians.
8 (13) Review of the State's adult protective services law.
9 (14) Enactment of the Uniform Guardianship and Protective Proceedings
10 Act (UGPPA).
11 (15) Whether guardianship statutes need revision to provide greater
12 protection of the health and welfare of incapacitated adults.
13 (16) Whether the State should track the number of people under private
14 guardianship and, if so, proposed methods for the tracking.

15 **SECTION 2.** The Legislative Study Commission on State Guardianship
16 Laws may make an interim report to the 2005 General Assembly not later than the
17 convening of the 2005 General Assembly, and shall make its final report to the 2005
18 General Assembly, Regular Session 2006, upon its convening.

19 **SECTION 3.** All State departments and agencies and local governments and
20 their subdivisions shall furnish the Commission with any information in their possession
21 or available to them.

22 **SECTION 4.** There is appropriated from the General Fund to the General
23 Assembly the sum of thirty thousand dollars (\$30,000) for the 2004-2005 fiscal year and
24 the sum of thirty thousand dollars (\$30,000) for the 2005-2006 fiscal year to carry out
25 the purposes of this act.

26 **SECTION 5.** This act becomes effective July 1, 2004.