

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1409*

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

Sponsors: Representatives Nye, Weiss, G. Wilson (Primary Sponsors);
Farmer-Butterfield, Fisher, Insko, Luebke, and Warner.

Referred to: Rules, Calendar, and Operations of the House.

May 12, 2004

A BILL TO BE ENTITLED

1
2 AN ACT TO ESTABLISH THE LEGISLATIVE STUDY COMMISSION ON STATE
3 GUARDIANSHIP LAWS, AS RECOMMENDED BY THE NORTH CAROLINA
4 STUDY COMMISSION ON AGING.

5 The General Assembly of North Carolina enacts:

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

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

- 11 (1) Four members of the House of Representatives appointed by the
12 Speaker of the House of Representatives.
- 13 (2) Four members of the Senate appointed by the President Pro Tempore
14 of the Senate.
- 15 (3) The Director of the Administrative Office of the Courts, or the
16 Director's designee.
- 17 (4) The Director of the Division of Aging in the Department of Health and
18 Human Services, or the Director's designee.
- 19 (5) A county director of social services appointed by the President Pro
20 Tempore of the Senate.
- 21 (6) A clerk of superior court appointed by the Speaker of the House of
22 Representatives.
- 23 (7) A physician who specializes in geriatrics appointed by the President
24 Pro Tempore of the Senate.
- 25 (8) An attorney who has experience in guardianship matters appointed by
26 the Speaker of the House of Representatives.
- 27 (9) A representative of the Governor's Advocacy Council for Persons
28 With Disabilities.

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

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

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

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

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

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

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

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

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

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

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

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