

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH70695-LBz-479 (05/16)

Short Title: Guardianship Study.

(Public)

Sponsors: Representative Farmer-Butterfield.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE JOINT LEGISLATIVE STUDY COMMISSION ON
STATE GUARDIANSHIP LAWS, AS RECOMMENDED BY THE HOUSE
SELECT COMMITTEE ON STATE GUARDIANSHIP LAWS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) There is created the Joint 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 19 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 and Adult Services 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 (10) A director of a local management entity appointed by the President Pro
4 Tempore of the Senate.
- 5 (11) A representative of the Mental Health Association in North Carolina
6 appointed by the Speaker of the House of Representatives.
- 7 (12) A member of an aging advocacy support group appointed by the
8 President Pro Tempore of the Senate.
- 9 (13) A county director of public health appointed by the Speaker of the
10 House of Representatives.

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

- 13 (a) The North Carolina Bar Association.
- 14 (b) The Arc of North Carolina.
- 15 (c) North Carolina Guardianship Association.
- 16 (d) Alzheimer's Association – Western Chapter.
- 17 (e) Alzheimer's Association – Eastern Chapter.
- 18 (f) Carolina Legal Assistance.
- 19 (g) The Area Agencies on Aging.
- 20 (h) County Departments of Aging.
- 21 (i) A county director of mental health, developmental disabilities, and substance
22 abuse services.

23 The Speaker of the House of Representatives shall designate one
24 Representative as cochair, and the President Pro Tempore of the Senate shall designate
25 one Senator as cochair. Vacancies on the Commission shall be filled by the same
26 appointing authority who made the initial appointment. The Commission shall expire
27 upon delivering its final report.

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

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

40 **SECTION 1.(c)** In conducting the study, the Commission shall consider
41 issues related to guardianship for incompetent persons and minors including, but not
42 limited to, the following:

- 43 (1) Whether guardianship should be a remedy of last resort used only if
44 less restrictive alternatives are insufficient.

- 1 (2) The definition of incompetency or, if appropriate, incapacity.
- 2 (3) Whether courts should be required to make express findings regarding
- 3 the extent of a person's incapacity and limit the scope of the
- 4 guardianship accordingly.
- 5 (4) Legal rights retained or lost as a result of being adjudicated
- 6 incompetent.
- 7 (5) The role of public human services agencies in providing guardianship
- 8 services.
- 9 (6) Legal procedures and protections in guardianship proceedings.
- 10 (7) Public monitoring of guardianship.
- 11 (8) Examination of current training resources and the possible
- 12 collaboration and coordination of current training resources for all
- 13 stakeholders including family members, individuals, corporate
- 14 guardians, and public agencies.
- 15 (9) Certification of all guardians and adoption of standards of practice for
- 16 guardians.
- 17 (10) Educating citizens with respect to guardianship and alternatives to
- 18 guardianship.
- 19 (11) Powers, duties, and liabilities of guardians, including guardians of the
- 20 person.
- 21 (12) Creation of Office of Public Guardian.
- 22 (13) Public guardianship, including the provision and funding of public
- 23 guardianship services, treatment of disinterested public agent
- 24 guardians, priorities regarding appointment of individuals,
- 25 corporations, and public guardians, and possible conflicts of interest
- 26 with the appointment of certain disinterested public agent guardians.
- 27 (14) Funding for guardianship services provided by nonprofit agencies
- 28 including the need of current corporate guardians for additional
- 29 resources in providing services to wards.
- 30 (15) Implementation of additional corporate guardianship programs.
- 31 (16) Enactment of the Uniform Guardianship and Protective Proceedings
- 32 Act (UGPPA) or similar revision of current Chapter 35A of the
- 33 General Statutes.
- 34 (17) Jurisdictional provisions governing incompetency and guardianship
- 35 proceedings and portability of guardianship for foreign guardians.
- 36 (18) Role of court-appointed lawyers and guardians ad litem in
- 37 guardianship proceedings to ensure adequate representation of
- 38 respondents.
- 39 (19) Whether guardianship statutes need revision to provide greater
- 40 protection of the health and welfare of incapacitated adults.
- 41 (20) Whether the State should track the number of people under private
- 42 guardianship and, if so, proposed methods for the tracking.
- 43 (21) Prudent investor rules.
- 44 (22) Review of the State's adult protective services law.

1 **SECTION 2.** The Legislative Study Commission on State Guardianship
2 Laws may make its final report to the Regular Session of the 2009 General Assembly,
3 prior to its convening.

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

7 **SECTION 4.** There is appropriated from the General Fund to the General
8 Assembly the sum of thirty thousand dollars (\$30,000) for the 2008-2009 fiscal year to
9 carry out the purposes of this act.

10 **SECTION 5.** This act becomes effective July 1, 2008.