

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2016-72
HOUSE BILL 817

AN ACT ENACTING THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT OF 2016.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 35B.

"Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

"Article 1.

"General Provisions.

"§ 35B-1. Short title and legislative purpose.

(a) This Chapter may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

(b) The General Assembly of North Carolina finds that there is ambiguity in the law with respect to jurisdiction in guardianship proceedings when more than one state is involved. In order to clarify these jurisdictional concerns and provide the best possible support and protection for incapacitated adults, the Uniform Laws Commission developed the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) for consideration by the states. The majority of states have adopted UAGPPJA, and North Carolina's guardianship system would be enhanced by adopting a version of UAGPPJA.

(c) The purpose of this legislation is to provide clear direction to the courts, attorneys, guardians, and individuals about the proper jurisdiction for guardianship proceedings. This Chapter is limited in scope to jurisdiction. The established system in North Carolina for determining incompetency, appointing guardians, and managing estates as governed by Chapter 35A of the North Carolina General Statutes is not affected by this new Chapter.

(d) The public policy goals are as follows:

- (1) To ensure that jurisdiction is located in one and only one state; except when an emergency exists or where the individual owns property in multiple states;
- (2) To establish procedures for transferring guardianship from one state to another state when the incapacitated adult moves; and
- (3) To provide a uniform national system for registration and enforcement of out-of-state guardianship orders.

"§ 35B-2. Definitions.

The following definitions apply in this Chapter:

- (1) Adult. – An individual who has attained 18 years of age.
- (2) Court. – For purposes of this Chapter, where the word "court" is used, it means the clerk of the superior court to the same extent that the clerk of superior court has original subject matter jurisdiction over incompetency and guardianship proceedings under Chapter 35A of the General Statutes.
- (3) General guardian. – "General guardian" has the same meaning as in G.S. 35A-1202. For purposes of this Chapter, (i) the term is limited to general guardians for adults and (ii) the general guardian shall have the same authority to act as the guardian and the guardian of the estate as set forth herein.
- (4) Guardian of the estate. – "Guardian of the estate" has the same meaning as in G.S. 35A-1202. For purposes of the Chapter, the term is limited to guardians of the estate for adults.



- (5) Guardian of the person. – "Guardian of the person" has the same meaning as in G.S. 35A-1202. For purposes of this Chapter, the term is limited to guardians of the person for adults.
- (6) Guardianship order. – An order appointing a guardian of the person or general guardian. For the purposes of this Chapter, an order appointing a guardian of the estate, general guardian, or other order related to the management of an adult's property is referred to as a protective order as defined in subdivision (14) of this section.
- (7) Guardianship proceeding. – A judicial proceeding in which an order for the appointment of a guardian of the person or general guardian is sought or has been issued pursuant to Chapter 35A of the General Statutes.
- (8) Incapacitated person. – An adult for whom a guardian of the person or general guardian has been appointed.
- (9) Incompetency order. – An order adjudicating incompetence of an adult.
- (10) Incompetency proceeding. – A judicial proceeding in which an order adjudicating a person to be an incompetent adult is sought or has been issued pursuant to Chapter 35A of the General Statutes.
- (11) Party. – The respondent, petitioner, guardian of the person, general guardian, guardian of the estate, or any other person allowed by the court to participate in an incompetency, guardianship, or protective proceeding.
- (12) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. This definition does not apply to the terms "incapacitated person" or "protected person."
- (13) Protected person. – An adult for whom a protective order or general guardianship order has been issued pursuant to Chapter 35A of the General Statutes.
- (14) Protective order. – An order appointing a guardian of the estate, general guardian, or other order related to management of an adult's property entered pursuant to Chapter 35A of the General Statutes.
- (15) Protective proceeding. – A judicial proceeding in which an order appointing a general guardian or a protective order is sought or has been issued under Chapter 35A of the General Statutes.
- (16) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (17) Respondent. – An adult for whom an adjudication of incompetence, a protective order, or a guardianship order is sought.
- (18) State. – A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

"§ 35B-3. Proceedings governed by other law.

This Chapter does not govern the following:

- (1) Guardianship and guardianship proceedings pertaining to minors less than 18 years of age.
- (2) Protective services proceedings pertaining to disabled and older adults pursuant to Articles 6 and 6A of Chapter 108A of the General Statutes.
- (3) Domestic violence and civil no-contact proceedings under Chapters 50B and 50C of the General Statutes.

"§ 35B-4. International application.

A court of this State may treat a foreign country as if it were a state for the purpose of applying this Article and Articles 2, 3, and 5 of this Chapter.

"§ 35B-5. Communication between courts.

(a) A court of this State may communicate with a court in another state concerning a proceeding arising under this Chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

"§ 35B-6. Cooperation between courts.

(a) In an incompetency, guardianship, or protective proceeding in this State, a court of this State may request the appropriate court of another state to do any of the following:

- (1) Hold an evidentiary hearing.
- (2) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state.
- (3) Order that an evaluation or assessment be made of the respondent.
- (4) Order any appropriate investigation of a person involved in a proceeding.
- (5) Forward to the court of this State a certified copy of the transcript or other record of a hearing under subdivision (1) of this section or any other proceeding, any evidence otherwise produced under subdivision (2) of this section, and any evaluation or assessment prepared in compliance with an order under subdivision (3) or (4) of this section.
- (6) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person.
- (7) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. § 160.103, as from time to time amended.

(b) If a court of another state in which an incompetency, guardianship, or protective proceeding is pending requests assistance of the kind provided in subsection (a) of this section, a court of this State has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

"§ 35B-7. Taking testimony in another state.

(a) In an incompetency, guardianship, or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In an incompetency, guardianship, or protective proceeding, a court in this State may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this State shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

"Article 2.

"Jurisdiction.

"§ 35B-8. Definitions.

(a) The following definitions apply in this Article:

- (1) Emergency. – A circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian of the person is necessary because no other person has authority and is willing to act on the respondent's behalf.
- (2) Home state. – The state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for the adjudication of incompetence; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition for the adjudication of incompetence.
- (3) Significant-connection state. – A state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(b) In determining under G.S. 35B-10 and G.S. 35B-17(e) whether a respondent has a significant connection with a particular state, the court shall consider:

- (1) The location of the respondent's family and other persons required to be notified of the incompetency, guardianship, or protective proceeding.
- (2) The length of time the respondent at any time was physically present in the state and the duration of any absence.
- (3) The location of the respondent's property.
- (4) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, drivers license, social relationship, and receipt of services.

"§ 35B-9. Exclusive jurisdictional basis.

This Article provides the exclusive jurisdictional basis for a court of this State to adjudicate incompetence, appoint a general guardian or guardian of the person, or issue a protective order for an adult.

"§ 35B-10. Jurisdiction.

Notwithstanding the provisions of G.S. 1-75.4(1), a court of this State has jurisdiction to adjudicate incompetence, appoint a general guardian or guardian of the person, or issue a protective order for a respondent only if:

- (1) This State is the respondent's home state; or
- (2) On the date the petition for the adjudication of incompetence is filed, this State is a significant-connection state and either of the following is true:
 - a. The respondent does not have a home state, or a court of the respondent's home state has declined to exercise jurisdiction because this State is a more appropriate forum.
 - b. The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order, all of the following are true:
 1. A petition for an appointment or order is not filed in the respondent's home state.
 2. An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding.
 3. The court in this State concludes that it is an appropriate forum under the factors set forth in G.S. 35B-13; or
- (3) This State does not have jurisdiction under either subdivision (1) or (2) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this State is the more appropriate forum, and jurisdiction in this State is consistent with the constitutions of this State and the United States; or
- (4) The requirements for special jurisdiction under G.S. 35B-11 are met.

"§ 35B-11. Special jurisdiction.

(a) A court of this State lacking jurisdiction under G.S. 35B-10 has special jurisdiction to do any of the following:

- (1) Appoint a guardian of the person in an emergency for a term not exceeding 90 days for a respondent who is physically present in this State.
- (2) Issue a protective order with respect to real or tangible personal property located in this State.
- (3) Appoint a general guardian, guardian of the person, or guardian of the estate for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to G.S. 35B-17.

(b) If a petition for the adjudication of incompetence and application for the appointment of a guardian of the person in an emergency is brought in this State and this State was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

"§ 35B-12. Exclusive and continuing jurisdiction.

Except as otherwise provided in G.S. 35B-11, a court that has appointed a general guardian or guardian of the person or issued a protective order consistent with this Chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

"§ 35B-13. Appropriate forum.

(a) A court of this State having jurisdiction under G.S. 35B-10 to adjudicate incompetence, appoint a general guardian or a guardian of the person, or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a court of this State declines to exercise its jurisdiction under subsection (a) of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a general guardian or guardian of the person or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

- (1) Any expressed preference of the respondent.
- (2) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation.
- (3) The length of time the respondent was physically present in or was a legal resident of this or another state.
- (4) The distance of the respondent from the court in each state.
- (5) The financial circumstances of the respondent's estate.
- (6) The nature and location of the evidence.
- (7) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.
- (8) The familiarity of the court of each state with the facts and issues in the proceeding.
- (9) If an appointment was made, the court's ability to monitor the conduct of the guardian or guardian of the estate.

"§ 35B-14. Jurisdiction declined by reason of conduct.

(a) If at any time a court of this State determines that it acquired jurisdiction to adjudicate incompetence, appoint a general guardian or guardian of the person, or issue a protective order because of unjustifiable conduct, the court may do any of the following:

- (1) Decline to exercise jurisdiction.
- (2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a general guardian or guardian of the person or issuance of a protective order is filed in a court of another state having jurisdiction.
- (3) Continue to exercise jurisdiction after considering all of the following:
 - a. The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction.
 - b. Whether it is a more appropriate forum than the court of any other state under the factors set forth in G.S. 35B-13(c).
 - c. Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of G.S. 35B-10.

(b) If a court of this State determines that it acquired jurisdiction to adjudicate incompetence, appoint a general guardian or guardian of the person, or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorneys' fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this State or a governmental subdivision, agency, or instrumentality of this State unless authorized by law other than the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

"§ 35B-15. Notice of proceeding.

If a petition for the adjudication of incompetence or application for the appointment of a general guardian or guardian of the person or issuance of a protective order is brought in this State and this State was not the respondent's home state on the date the petition was filed, in

addition to complying with the notice requirements of this State, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this State.

"§ 35B-16. Proceedings in more than one state.

Except for a petition for the appointment of a guardian of the person in an emergency or issuance of a protective order limited to property located in this State under G.S. 35B-11(a)(1) or (a)(2), if a petition for the adjudication of incompetence, appointment of a general guardian or guardian of the person, or issuance of a protective order is filed in this State and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

- (1) If the court in this State has jurisdiction under G.S. 35B-10, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to G.S. 35B-10 before the appointment or issuance of the order.
- (2) If the court in this State does not have jurisdiction under G.S. 35B-10, whether at the time the petition for the adjudication of incompetence is filed or at any time before the appointment or issuance of the guardianship or protective order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this State shall dismiss the petition unless the court in the other state determines that the court in this State is a more appropriate forum.

"Article 3.

"Transfer of General Guardianship, Guardianship of the Person, or Guardianship of the Estate.

"§ 35B-17. Transfer of general guardianship, guardianship of the person, or guardianship of the estate to another state.

(a) A general guardian, guardian of the person, or guardian of the estate appointed in this State may petition the court to transfer the incompetency proceeding and the general guardianship, guardianship of the person, or guardianship of the estate to another state, respectively.

(b) Notice of a petition under subsection (a) of this section must be given to the persons that would be entitled to notice of a petition in this State for the adjudication of incompetence and the application for the appointment of a general guardian, guardian of the person, or guardian of the estate.

(c) On the court's own motion or on request of the general guardian, guardian of the person, or guardian of the estate, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (a) of this section.

(d) The court shall issue a provisional order granting a petition to transfer the incompetency proceeding and guardianship of the person and shall direct the guardian of the person to petition for guardianship of the person in the other state if the court is satisfied that the guardianship of the person will be accepted by the court in the other state and the court finds all of the following:

- (1) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state.
- (2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person.
- (3) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(e) The court shall issue a provisional order granting a petition to transfer the incompetency proceeding and a guardianship of the estate and shall direct the guardian of the estate to petition for guardianship of the estate in the other state if the court is satisfied that the guardianship of the estate will be accepted by the court of the other state and the court finds all of the following:

- (1) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in G.S. 35B-8(b).

- (2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person.
- (3) Adequate arrangements will be made for management of the protected person's property.

(f) The court shall issue a provisional order granting a petition to transfer the incompetency proceeding and general guardianship and shall direct the general guardian to petition for general guardianship in the other state if the court is satisfied that the general guardianship will be accepted by the court of the other state and the court finds the existence of the factors set forth in subdivisions (1), (2), and (3) of subsection (d) and subdivisions (1), (2), and (3) of subsection (e) of this section.

(g) The court shall issue a final order confirming the transfer and terminating the incompetency proceeding and the general guardianship, guardianship of the person, or guardianship of the estate upon its receipt of all of the following:

- (1) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to G.S. 35B-18.
- (2) The documents required to terminate a general guardianship, guardianship of the person, or guardianship of the estate in this State.

"§ 35B-18. Accepting guardianship, guardianship of the person, or guardianship of the estate transferred from another state.

(a) To confirm transfer of a general guardianship, guardianship of the person, or guardianship of the estate transferred to this State under provisions similar to G.S. 35B-17, the general guardian, guardian of the person, or guardian of the estate must petition the court in this State to accept the general guardianship, guardianship of the person, or guardianship of the estate. The petition must include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subsection (a) of this section must be given to those persons that would be entitled to notice if the petition were a petition for the adjudication of incompetence or the application for the appointment of a guardian of the person or general guardian or issuance of a protective order in both the transferring state and this State. The notice must be given in the same manner as notice is required to be given in this State.

(c) On the court's own motion or on request of the general guardian, guardian of the person, or guardian of the estate, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (a) of this section.

(d) The court shall issue a provisional order granting a petition filed under subsection (a) of this section unless either of the following is true:

- (1) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person.
- (2) The general guardian, guardian of the person, or guardian of the estate is ineligible for appointment in this State.

(e) The court shall issue a final order accepting the proceeding and appointing the general guardian, guardian of the person, or guardian of the estate as the general guardian, guardian of the person, or guardian of the estate in this State upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to G.S. 35B-17 transferring the proceeding to this State.

(f) Not later than 90 days after issuance of a final order accepting transfer of a general guardianship, guardianship of the person, or guardianship of the estate, the court shall determine whether the general guardianship, guardianship of the person, or guardianship of the estate needs to be modified to conform to the law of this State.

(g) In granting a petition under this section, the court shall recognize a general guardianship, guardianship of the person, or guardianship of the estate order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the general guardian, guardian of the person, or guardian of the estate.

(h) The denial by a court of this State of a petition to accept a general guardianship, guardianship of the person, or guardianship of the estate transferred from another state does not affect the ability of the general guardian, guardian of the person, or guardian of the estate to

seek appointment as general guardian, guardian of the person, or guardian of the estate in this State under Subchapter II of Chapter 35A of the General Statutes if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

"Article 4.

"Registration and Recognition of Orders From Other States.

"§ 35B-19. Registration of guardianship of the person orders.

If a guardian of the person has been appointed in another state and a petition for the adjudication of incompetence or an application for the appointment of a guardian of the person is not pending in this State, the guardian of the person appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship of the person order in this State by filing as a foreign judgment in a court, in any appropriate county of this State, certified copies of the order and letters of office.

"§ 35B-20. Registration of protective orders and general guardianship orders.

If a guardian of the estate or general guardian has been appointed in another state and a petition for the adjudication of incompetence or an application for the issuance of a protective order is not pending in this State, the guardian of the estate or general guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order or general guardianship in this State by filing as a foreign judgment in a court of this State, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

"§ 35B-21. Effect of registration.

(a) Upon registration of a general guardianship, guardianship of the person, or protective order from another state, the general guardian, guardian of the person, or guardian of the estate may exercise in this State all powers authorized in the order of appointment except as prohibited under the laws of this State, including maintaining actions and proceedings in this State and, if the general guardian, guardian of the person, or guardian of the estate is not a resident of this State, subject to any conditions imposed upon nonresident parties.

(b) A court of this State may grant any relief available under this Chapter and other law of this State to enforce a registered order.

"Article 5.

"Miscellaneous Provisions.

"§ 35B-22. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"§ 35B-23. Relation to electronic signatures in Global and National Commerce Act.

This Chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. § 7003(b)."

SECTION 2. G.S. 35A-1113 is repealed.

SECTION 3. Nothing in this act shall be construed to otherwise affect the requirements for seeking an ancillary guardianship under G.S. 35A-1280 or for petitioning the court for the removal of personalty from the State under G.S. 35A-1281.

SECTION 4. This act becomes effective December 1, 2016, and applies to multistate guardianship and protective proceedings initiated on or after that date. Articles 1, 3, and 4 of Chapter 35B of the General Statutes, as enacted by Section 1 of this act, and G.S. 35B-22 and G.S. 35B-23, as enacted by Section 1 of this act, apply to proceedings initiated prior to December 1, 2016, regardless of whether an incompetency, guardianship, or protective order has been issued.

In the General Assembly read three times and ratified this the 29th day of June, 2016.

s/ Harry Brown
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 9:01 a.m. this 30th day of June, 2016