

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE DRS15068-SHz-1* (1/13)

Short Title: Guardianship Study.

(Public)

Sponsors: Senators Swindell; and Purcell.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A LEGISLATIVE STUDY COMMISSION ON STATE
GUARDIANSHIP LAWS.

Whereas, State laws pertaining to guardianship and powers of attorney are important for the protection of citizens who are unable to make personal decisions due to mental or physical impairment or incapacity; and

Whereas, by virtue of an increasing elderly population, the number and circumstance of persons who currently need or may need in the future alternate decision makers to act in their best interest is also increasing; and

Whereas, the State's guardianship laws have not been thoroughly reviewed in more than 12 years to determine if changes in content or policy are needed to strengthen the efficiency and effectiveness of these laws; Now, therefore,

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 14 members, seven members appointed by the Speaker of the House of Representatives, at least four of whom shall be members of the House of Representatives, and seven members appointed by the President Pro Tempore of the Senate, at least four of whom shall be members of the Senate. The public members appointed by the Speaker and the President Pro Tempore shall be such persons as have experience with the State guardianship laws, including court administrators, attorneys, judges, public or private guardians, or representatives of the interests of elderly and disabled persons. The Speaker shall designate one Representative as cochair, and the President Pro Tempore shall designate one Senator as cochair. Vacancies on the Commission shall be filled by the same

1 appointing authority as made the initial appointment. The Commission shall expire upon
2 delivering its final report.

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

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

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

- 17 (1) Whether guardianship should be a remedy of last resort used only if
18 less restrictive alternatives are insufficient.
- 19 (2) The definition of incompetency.
- 20 (3) Whether courts should be required to make express findings regarding
21 the extent of a person's incapacity and limit the scope of the
22 guardianship accordingly.
- 23 (4) Legal rights retained or lost as a result of being adjudicated
24 incompetent.
- 25 (5) The proper role of attorneys and guardians ad litem in guardianship
26 proceedings.
- 27 (6) The role of public human services agencies in providing guardianship
28 services.
- 29 (7) Legal procedures and protections in guardianship proceedings.
- 30 (8) Public monitoring of guardianship.
- 31 (9) Funding for guardianship services provided by public and nonprofit
32 agencies.
- 33 (10) Educating citizens with respect to guardianship and alternatives to
34 guardianship.
- 35 (11) Prudent investor rules.
- 36 (12) Powers, duties, and liabilities of guardians.
- 37 (13) Review of the State's adult protective services law.
- 38 (14) Enactment of the Uniform Guardianship and Protective Proceedings
39 Act (UGPPA).
- 40 (15) Whether guardianship statutes need revision to provide greater
41 protection of the health and welfare of incapacitated adults.
- 42 (16) Whether the State should track the number of people under private
43 guardianship and, if so, proposed methods for the tracking.

1 **SECTION 2.** The Legislative Study Commission on State Guardianship
2 Laws may make an interim report to the 2003 General Assembly not later than the
3 convening of the 2003 General Assembly, 2004 Regular Session, and shall make its
4 final report to the 2005 General Assembly upon its convening.

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

8 **SECTION 4.** There is appropriated from the General Fund to the General
9 Assembly the sum of thirty thousand dollars (\$30,000) for the 2003-2004 fiscal year and
10 the sum of thirty thousand dollars (\$30,000) for the 2004-2005 fiscal year to carry out
11 the purposes of this act.

12 **SECTION 5.** This act becomes effective July 1, 2003.