

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

1

HOUSE BILL 1394

Short Title: Testamentary Recommendation of Guardian.

(Public)

Sponsors: Representative Moore.

Referred to: Judiciary II.

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE PARENTS OF AN INCOMPETENT ADULT WHO IS  
NOT MARRIED TO RECOMMEND A GUARDIAN FOR THAT ADULT BY  
WILL OR OTHER DOCUMENT.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 5 of Chapter 35A is amended by adding a new section  
to read:

**"§ 35A-1212.1. Recommendation of appointment of guardian by will or other  
writing.**

(a) Any parent may by will, recommend appointment of a guardian for an  
unmarried child who has been adjudicated an incompetent person and specify desired  
limitations on the powers to be given to the guardian. If both parents make such  
recommendations, the will with the latest date shall, in the absence of other relevant  
factors, prevail. Such recommendation shall be a strong guide for the clerk in  
appointing a guardian, but the clerk is not bound by the recommendation if the clerk  
finds that a different appointment is in the incompetent adult's best interest. If the will  
specifically so directs, a guardian appointed pursuant to such recommendation may be  
permitted to qualify and serve without giving bond, unless the clerk finds as a fact that  
the interest of the incompetent adult would be best served by requiring the guardian to  
give bond."

**SECTION 2.** G.S. 35A-1214 reads as rewritten:

**"§ 35A-1214. Priorities for appointment.**

The clerk shall consider appointing a guardian according to the following order of  
priority: an individual recommended under G.S. 35A-1212.1; an individual; a  
corporation; or a disinterested public agent. No public agent shall be appointed  
guardian until diligent efforts have been made to find an appropriate individual or  
corporation to serve as guardian, but in every instance the clerk shall base the  
appointment of a guardian or guardians on the best interest of the ward."

**SECTION 3.** This act is effective when it becomes law.