

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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**SENATE BILL 945*
Judiciary I Committee Substitute Adopted 5/12/09**

Short Title: Guardianship Study.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED
AN ACT TO CREATE THE JOINT LEGISLATIVE STUDY COMMISSION ON STATE
GUARDIANSHIP LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. 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 2. 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.
- (9) A representative of Disability Rights North Carolina.
- (10) A director of a local management entity appointed by the President Pro Tempore of the Senate.
- (11) A representative of the Mental Health Association in North Carolina appointed by the Speaker of the House of Representatives.
- (12) A member of an aging advocacy support group appointed by the President Pro Tempore of the Senate.
- (13) A director of public health appointed by the Speaker of the House of Representatives.

In addition, representatives designated by the following organizations shall serve as advisory, nonvoting members of the Commission:

- a. The North Carolina Bar Association.



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- b. The Arc of North Carolina.
- c. The North Carolina Guardianship Association.
- d. The Alzheimer's Association – Western North Carolina Chapter.
- e. The Alzheimer's Association – Eastern North Carolina Chapter.
- f. The Protection and Advocacy for Individuals with Mental Illness Advisory Council (PAIMI).
- g. Area Agencies on Aging.
- h. County Departments on Aging.
- i. The North Carolina Hospital Association.
- j. A county director of mental health, developmental disabilities, and substance abuse services.

The Speaker of the House of Representatives shall designate one representative as cochair, and the President Pro Tempore of the Senate shall designate one senator as cochair. Vacancies on the Commission shall be filled by the same appointing authority who made the initial appointment.

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

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

SECTION 3. In conducting the study, the Commission shall consider issues related to guardianship for incompetent persons and minors, including, but not limited to, the following:

- (1) Whether guardianship should be a remedy of last resort used only if less restrictive alternatives are insufficient.
- (2) The definition of incompetency or, if appropriate, incapacity.
- (3) Whether courts should be required to make express findings regarding the extent of a person's incapacity and limit the scope of the guardianship accordingly.
- (4) Legal rights retained or lost as a result of being adjudicated incompetent.
- (5) The role of public human services agencies in providing guardianship services.
- (6) Legal procedures and protections in guardianship proceedings.
- (7) Public monitoring of guardianship.
- (8) Examination of current training resources and the possible collaboration and coordination of current training resources for all stakeholders, including family members, individuals, corporate guardians, and public agencies.
- (9) Certification of all guardians and adoption of standards of practice for guardians.
- (10) Educating citizens with respect to guardianship and alternatives to guardianship.
- (11) Powers, duties, and liabilities of guardians, including guardians of the person.
- (12) Creation of an Office of Public Guardian.

- 1 (13) Public guardianship, including the provision and funding of public
2 guardianship services, treatment of disinterested public agent guardians,
3 priorities regarding appointment of individuals, corporations, and public
4 guardians, and possible conflicts of interest with the appointment of certain
5 disinterested public agent guardians.
- 6 (14) Funding for guardianship services provided by nonprofit agencies, including
7 the need of current corporate guardians for additional resources in providing
8 services to wards.
- 9 (15) Implementation of additional corporate guardianship programs.
- 10 (16) Enactment of the Uniform Guardianship and Protective Proceedings Act
11 (UGPPA) or similar revisions to Chapter 35A of the General Statutes.
- 12 (17) Jurisdictional provisions governing incompetency and guardianship
13 proceedings and portability of guardianship for foreign guardians.
- 14 (18) Role of court-appointed lawyers and guardians ad litem in guardianship
15 proceedings to ensure adequate representation of respondents.
- 16 (19) Whether guardianship statutes need revision to provide greater protection of
17 the health and welfare of incapacitated adults.
- 18 (20) Whether the State should track the number of people under private
19 guardianship and, if so, proposed methods for the tracking.
- 20 (21) Prudent investor rules.
- 21 (22) Review of the State's adult protective services law.

22 **SECTION 4.** The Legislative Study Commission on State Guardianship Laws may
23 make an interim report to the 2010 Regular Session of the 2009 General Assembly. The
24 Commission shall make a final report to the 2011 General Assembly prior to its convening. The
25 Commission shall expire upon delivering its final report, or upon the convening of the 2011
26 General Assembly, whichever occurs first.

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

30 **SECTION 6.** This act is effective when it becomes law.