

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2003**

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**SENATE DRS15209-SWz-33A\* (3/29)**

Short Title: Legislative Study Comm./Guardianship. (Public)

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Sponsors: Senators Swindell, Allran, Dannelly, Moore, and Queen.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE LEGISLATIVE STUDY COMMISSION ON STATE  
GUARDIANSHIP LAWS, AS RECOMMENDED BY THE NORTH CAROLINA  
STUDY COMMISSION ON AGING.

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

- 5           (a) The North Carolina Bar Association.
- 6           (b) The Arc of North Carolina.
- 7           (c) North Carolina Guardianship Association.
- 8           (d) Alzheimer's Association – Western Chapter.
- 9           (e) Alzheimer's Association – Eastern Chapter.
- 10          (f) Carolina Legal Assistance.
- 11          (g) The Area Agencies on Aging.
- 12          (h) County Departments of Aging.

13          The Speaker shall designate one Representative as cochair, and the President  
14 Pro Tempore shall designate one Senator as cochair. Vacancies on the Commission  
15 shall be filled by the same appointing authority as made the initial appointment. The  
16 Commission shall expire upon delivering its final report.

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

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

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

- 31          (1) Whether guardianship should be a remedy of last resort used only if  
32             less restrictive alternatives are insufficient.
- 33          (2) The definition of incompetency.
- 34          (3) Whether courts should be required to make express findings regarding  
35             the extent of a person's incapacity and limit the scope of the  
36             guardianship accordingly.
- 37          (4) Legal rights retained or lost as a result of being adjudicated  
38             incompetent.
- 39          (5) The proper role of attorneys and guardians ad litem in guardianship  
40             proceedings.
- 41          (6) The role of public human services agencies in providing guardianship  
42             services.
- 43          (7) Legal procedures and protections in guardianship proceedings.
- 44          (8) Public monitoring of guardianship.

1           (9)    Funding for guardianship services provided by public and nonprofit  
2           agencies.

3           (10)   Educating citizens with respect to guardianship and alternatives to  
4           guardianship.

5           (11)   Prudent investor rules.

6           (12)   Powers, duties, and liabilities of guardians.

7           (13)   Review of the State's adult protective services law.

8           (14)   Enactment of the Uniform Guardianship and Protective Proceedings  
9           Act (UGPPA).

10          (15)   Whether guardianship statutes need revision to provide greater  
11          protection of the health and welfare of incapacitated adults.

12          (16)   Whether the State should track the number of people under private  
13          guardianship and, if so, proposed methods for the tracking.

14          **SECTION 2.** The Legislative Study Commission on State Guardianship  
15          Laws may make an interim report to the 2005 General Assembly not later than the  
16          convening of the 2005 General Assembly, and shall make its final report to the 2005  
17          General Assembly, Regular Session 2006 upon its convening.

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

21          **SECTION 4.** There is appropriated from the General Fund to the General  
22          Assembly the sum of thirty thousand dollars (\$30,000) for the 2004-2005 fiscal year and  
23          the sum of thirty thousand dollars (\$30,000) for the 2005-2006 fiscal year to carry out  
24          the purposes of this act.

25          **SECTION 5.** This act becomes effective July 1, 2004.