

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 817

Short Title: Enact Uniform Law on Adult Guardianship. (Public)

Sponsors: Representatives R. Turner, Meyer, Farmer-Butterfield, and Hurley (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary III.

April 15, 2015

1 A BILL TO BE ENTITLED
2 AN ACT ENACTING THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE
3 PROCEEDINGS JURISDICTION ACT OF 2015.

4 The General Assembly of North Carolina enacts:

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

6 **"Chapter 35B.**

7 **"Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.**

8 **"Article 1.**

9 **"General Provisions.**

10 **"§ 35B-1. Short title.**

11 This Chapter may be cited as the Uniform Adult Guardianship and Protective Proceedings
12 Jurisdiction Act.

13 **"§ 35B-2. Definitions.**

14 The following definitions apply in this Chapter:

- 15 (1) Adult. – An individual who has attained 18 years of age.
16 (2) Guardian of the estate. – A person appointed by the court to administer the
17 property of an adult, including a person appointed under Subchapter II of
18 Chapter 35A of the General Statutes.
19 (3) Guardian or guardian of the person. – A person appointed by the court to
20 make decisions regarding the person of an adult, including a person
21 appointed under Subchapter II of Chapter 35A of the General Statutes.
22 (4) Guardianship order. – An order appointing a guardian.
23 (5) Guardianship proceeding. – A judicial proceeding in which an order for the
24 appointment of a guardian is sought or has been issued.
25 (6) Incapacitated person. – An adult for whom a guardian has been appointed.
26 (7) Party. – The respondent, petitioner, guardian, guardian of the estate, or any
27 other person allowed by the court to participate in a guardianship or
28 protective proceeding.
29 (8) Person. – An individual, corporation, business trust, estate, trust, partnership,
30 limited liability company, association, joint venture, public corporation,
31 government or governmental subdivision, agency, or instrumentality, or any
32 other legal or commercial entity. This definition does not apply to the terms
33 "incapacitated person" or "protected person."
34 (9) Protected person. – An adult for whom a protective order has been issued.



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- 1 (10) Protective order. – An order appointing a guardian of the estate or other
2 order related to management of an adult's property.
3 (11) Protective proceeding. – A judicial proceeding in which a protective order is
4 sought or has been issued.
5 (12) Record. – Information that is inscribed on a tangible medium or that is stored
6 in an electronic or other medium and is retrievable in perceivable form.
7 (13) Respondent. – An adult for whom a protective order or the appointment of a
8 guardian is sought.
9 (14) State. – A state of the United States, the District of Columbia, Puerto Rico,
10 the United States Virgin Islands, a federally recognized Indian tribe, or any
11 territory or insular possession subject to the jurisdiction of the United States.

12 **§ 35B-3. Proceedings governed by other law.**

13 This Chapter does not govern the following:

- 14 (1) Guardianship and guardianship proceedings pertaining to minors under 18
15 years of age.
16 (2) Guardianship and guardianship proceedings pertaining to adults that do not
17 involve courts with jurisdiction outside of this State.

18 **§ 35B-4. International application.**

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

21 **§ 35B-5. Communication between courts.**

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

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

29 **§ 35B-6. Cooperation between courts.**

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

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

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

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

(a) In a 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 a 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 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 a protective order or the appointment of a guardian; 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.

(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 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 appoint a guardian of the person or issue a protective order for an adult.

"§ 35B-10. Jurisdiction.

A court of this State has jurisdiction to appoint a guardian or issue a protective order for a respondent if all of the following criteria are met:

(1) This State is the respondent's home state.

(2) On the date the petition is filed, this State is a significant-connection state and either of the following is true:

1 a. The respondent does not have a home state, or a court of the
2 respondent's home state has declined to exercise jurisdiction because
3 this State is a more appropriate forum.

4 b. The respondent has a home state, a petition for an appointment or
5 order is not pending in a court of that state or another
6 significant-connection state, and, before the court makes the
7 appointment or issues the order, all of the following are true:

8 1. A petition for an appointment or order is not filed in the
9 respondent's home state.

10 2. An objection to the court's jurisdiction is not filed by a person
11 required to be notified of the proceeding.

12 3. The court in this State concludes that it is an appropriate
13 forum under the factors set forth in G.S. 35B-13.

14 (3) This State does not have jurisdiction under either subdivision (1) or (2) of
15 this section, the respondent's home state and all significant-connection states
16 have declined to exercise jurisdiction because this State is the more
17 appropriate forum, and jurisdiction in this State is consistent with the
18 constitutions of this State and the United States.

19 (4) The requirements for special jurisdiction under G.S. 35B-11 are met.

20 **"§ 35B-11. Special jurisdiction.**

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

23 (1) Appoint a guardian in an emergency for a term not exceeding 90 days for a
24 respondent who is physically present in this State.

25 (2) Issue a protective order with respect to real or tangible personal property
26 located in this State.

27 (3) Appoint a guardian or guardian of the estate for an incapacitated or protected
28 person for whom a provisional order to transfer the proceeding from another
29 state has been issued under procedures similar to G.S. 35B-17.

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

34 **"§ 35B-12. Exclusive and continuing jurisdiction.**

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

39 **"§ 35B-13. Appropriate forum.**

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

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

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

49 (1) Any expressed preference of the respondent.

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

15 **"§ 35B-14. Jurisdiction declined by reason of conduct.**

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

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

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

43 **"§ 35B-15. Notice of proceeding.**

44 If a petition for the appointment of a guardian or issuance of a protective order is brought in
45 this State and this State was not the respondent's home state on the date the petition was filed,
46 in addition to complying with the notice requirements of this State, notice of the petition must
47 be given to those persons who would be entitled to notice of the petition if a proceeding were
48 brought in the respondent's home state. The notice must be given in the same manner as notice
49 is required to be given in this State.

50 **"§ 35B-16. Proceedings in more than one state.**

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

6 (1) If the court in this State has jurisdiction under G.S. 35B-10, it may proceed
7 with the case unless a court in another state acquires jurisdiction under
8 provisions similar to G.S. 35B-10 before the appointment or issuance of the
9 order.

10 (2) If the court in this State does not have jurisdiction under G.S. 35B-10,
11 whether at the time the petition is filed or at any time before the appointment
12 or issuance of the order, the court shall stay the proceeding and
13 communicate with the court in the other state. If the court in the other state
14 has jurisdiction, the court in this State shall dismiss the petition unless the
15 court in the other state determines that the court in this State is a more
16 appropriate forum.

17 "Article 3.

18 "Transfer of Guardianship or Guardian of the Estateship.

19 **"§ 35B-17. Transfer of guardianship or guardian of the estateship to another state.**

20 (a) A guardian or guardian of the estate appointed in this State may petition the court to
21 transfer the guardianship or guardian of the estateship to another state.

22 (b) Notice of a petition under subsection (a) of this section must be given to the persons
23 that would be entitled to notice of a petition in this State for the appointment of a guardian or
24 guardian of the estate.

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

28 (d) The court shall issue an order provisionally granting a petition to transfer a
29 guardianship and shall direct the guardian to petition for guardianship in the other state if the
30 court is satisfied that the guardianship will be accepted by the court in the other state and the
31 court finds all of the following:

32 (1) The incapacitated person is physically present in or is reasonably expected to
33 move permanently to the other state.

34 (2) An objection to the transfer has not been made or, if an objection has been
35 made, the objector has not established that the transfer would be contrary to
36 the interests of the incapacitated person.

37 (3) Plans for care and services for the incapacitated person in the other state are
38 reasonable and sufficient.

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

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

46 (2) An objection to the transfer has not been made or, if an objection has been
47 made, the objector has not established that the transfer would be contrary to
48 the interests of the protected person.

49 (3) Adequate arrangements will be made for management of the protected
50 person's property.

1 **"§ 35B-20. Registration of protective orders.**

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

8 **"§ 35B-21. Effect of registration.**

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

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

16 "Article 5.

17 "Miscellaneous Provisions.

18 **"§ 35B-22. Uniformity of application and construction.**

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

21 **"§ 35B-23. Relation to electronic signatures in Global and National Commerce Act.**

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

26 **SECTION 5.** This act becomes effective December 1, 2015, and applies to
27 multi-state guardianship and protective proceedings initiated on or after that date. Articles 1, 3,
28 and 4 of Chapter 35B of the General Statutes, as enacted by Section 1 of this act, and
29 G.S. 35B-22 and G.S. 35B-23, as enacted by Section 1 of this act, apply to proceedings
30 initiated prior to December 1, 2015, regardless of whether a guardianship or protective order
31 has been issued.