

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

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**HOUSE BILL 2379**

Short Title: Guardianship Study. (Public)

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Sponsors: Representatives Farmer-Butterfield, Bordsen, Barnhart, Goodwin (Primary Sponsors); Alexander, Bell, Boylan, Clary, Coleman, Current, Dickson, England, Glazier, Harrison, Hughes, Hurley, Lewis, Parmon, Pierce, Ross, Samuelson, Stam, Wainwright, Walend, and Weiss.

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Referred to: Children, Youth and Families, if favorable, Appropriations.

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May 26, 2008

A BILL TO BE ENTITLED

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2 AN ACT TO ESTABLISH THE JOINT LEGISLATIVE STUDY COMMISSION ON  
3 STATE GUARDIANSHIP LAWS, AS RECOMMENDED BY THE HOUSE  
4 SELECT COMMITTEE ON STATE GUARDIANSHIP LAWS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.(a)** There is created the Joint Legislative Study Commission on  
7 State Guardianship Laws. The purpose of the Commission is to review State law  
8 pertaining to guardianship and its relationship to other pertinent State laws such as the  
9 health care power of attorney, the right to a natural death, and durable power of  
10 attorney.

11 **SECTION 1.(b)** The Commission shall consist of 19 members as follows:

- 12 (1) Four members of the House of Representatives appointed by the  
13 Speaker of the House of Representatives.
- 14 (2) Four members of the Senate appointed by the President Pro Tempore  
15 of the Senate.
- 16 (3) The Director of the Administrative Office of the Courts or the  
17 Director's designee.
- 18 (4) The Director of the Division of Aging and Adult Services in the  
19 Department of Health and Human Services or the Director's designee.
- 20 (5) A county director of social services appointed by the President Pro  
21 Tempore of the Senate.
- 22 (6) A clerk of superior court appointed by the Speaker of the House of  
23 Representatives.
- 24 (7) A physician who specializes in geriatrics appointed by the President  
25 Pro Tempore of the Senate.

- 1           (8)    An attorney who has experience in guardianship matters appointed by  
2           the Speaker of the House of Representatives.
- 3           (9)    A representative of the Governor's Advocacy Council for Persons  
4           With Disabilities.
- 5           (10)   A director of a local management entity appointed by the President Pro  
6           Tempore of the Senate.
- 7           (11)   A representative of the Mental Health Association in North Carolina  
8           appointed by the Speaker of the House of Representatives.
- 9           (12)   A member of an aging advocacy support group appointed by the  
10          President Pro Tempore of the Senate.
- 11          (13)   A county director of public health appointed by the Speaker of the  
12          House of Representatives.

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

- 15          (a)    The North Carolina Bar Association.
- 16          (b)    The Arc of North Carolina.
- 17          (c)    North Carolina Guardianship Association.
- 18          (d)    Alzheimer's Association – Western Chapter.
- 19          (e)    Alzheimer's Association – Eastern Chapter.
- 20          (f)    Carolina Legal Assistance.
- 21          (g)    The Area Agencies on Aging.
- 22          (h)    County Departments of Aging.
- 23          (i)    A county director of mental health, developmental disabilities, and substance  
24   abuse services.

25           The Speaker of the House of Representatives shall designate one  
26   Representative as cochair, and the President Pro Tempore of the Senate shall designate  
27   one Senator as cochair. Vacancies on the Commission shall be filled by the same  
28   appointing authority who made the initial appointment. The Commission shall expire  
29   upon delivering its final report.

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

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

42           **SECTION 1.(c)** In conducting the study, the Commission shall consider  
43   issues related to guardianship for incompetent persons and minors including, but not  
44   limited to, the following:

- 1 (1) Whether guardianship should be a remedy of last resort used only if  
2 less restrictive alternatives are insufficient.
- 3 (2) The definition of incompetency or, if appropriate, incapacity.
- 4 (3) Whether courts should be required to make express findings regarding  
5 the extent of a person's incapacity and limit the scope of the  
6 guardianship accordingly.
- 7 (4) Legal rights retained or lost as a result of being adjudicated  
8 incompetent.
- 9 (5) The role of public human services agencies in providing guardianship  
10 services.
- 11 (6) Legal procedures and protections in guardianship proceedings.
- 12 (7) Public monitoring of guardianship.
- 13 (8) Examination of current training resources and the possible  
14 collaboration and coordination of current training resources for all  
15 stakeholders including family members, individuals, corporate  
16 guardians, and public agencies.
- 17 (9) Certification of all guardians and adoption of standards of practice for  
18 guardians.
- 19 (10) Educating citizens with respect to guardianship and alternatives to  
20 guardianship.
- 21 (11) Powers, duties, and liabilities of guardians, including guardians of the  
22 person.
- 23 (12) Creation of Office of Public Guardian.
- 24 (13) Public guardianship, including the provision and funding of public  
25 guardianship services, treatment of disinterested public agent  
26 guardians, priorities regarding appointment of individuals,  
27 corporations, and public guardians, and possible conflicts of interest  
28 with the appointment of certain disinterested public agent guardians.
- 29 (14) Funding for guardianship services provided by nonprofit agencies  
30 including the need of current corporate guardians for additional  
31 resources in providing services to wards.
- 32 (15) Implementation of additional corporate guardianship programs.
- 33 (16) Enactment of the Uniform Guardianship and Protective Proceedings  
34 Act (UGPPA) or similar revision of current Chapter 35A of the  
35 General Statutes.
- 36 (17) Jurisdictional provisions governing incompetency and guardianship  
37 proceedings and portability of guardianship for foreign guardians.
- 38 (18) Role of court-appointed lawyers and guardians ad litem in  
39 guardianship proceedings to ensure adequate representation of  
40 respondents.
- 41 (19) Whether guardianship statutes need revision to provide greater  
42 protection of the health and welfare of incapacitated adults.
- 43 (20) Whether the State should track the number of people under private  
44 guardianship and, if so, proposed methods for the tracking.

1           (21) Prudent investor rules.

2           (22) Review of the State's adult protective services law.

3           **SECTION 2.** The Legislative Study Commission on State Guardianship  
4 Laws may make its final report to the Regular Session of the 2009 General Assembly,  
5 prior to its convening.

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

9           **SECTION 4.** There is appropriated from the General Fund to the General  
10 Assembly the sum of thirty thousand dollars (\$30,000) for the 2008-2009 fiscal year to  
11 carry out the purposes of this act.

12           **SECTION 5.** This act becomes effective July 1, 2008.