

March 14, 2007

**H 811. GUARDIANSHIP/JURISDICTION AND PORTABILITY.** Filed 3/14/07. *TO REVISE THE STATE'S GUARDIANSHIP STATUTES WITH RESPECT TO JURISDICTION, VENUE, PROCEDURE, APPEALS, AND PORTABILITY AS RECOMMENDED BY THE HOUSE STUDY COMMITTEE ON STATE GUARDIANSHIP LAWS*

To be summarized in tomorrow's *Daily Bulletin*.

**Intro. by Goodwin.**

GS 35A

March 15, 2007

**H 811. GUARDIANSHIP/JURISDICTION AND PORTABILITY.** Filed 3/14/07. *TO REVISE THE STATE'S GUARDIANSHIP STATUTES WITH RESPECT TO JURISDICTION, VENUE, PROCEDURE, APPEALS, AND PORTABILITY AS RECOMMENDED BY THE HOUSE STUDY COMMITTEE ON STATE GUARDIANSHIP LAWS.*

This act undertakes a comprehensive revision of the state's guardianship statutes in the areas indicated in the title.

*Jurisdiction.* Enacts new GS 35A-1203.1 providing the clerk of superior court with exclusive, original jurisdiction over proceedings to appoint a guardian for a minor or an incompetent person and specifying when exceptions to jurisdiction may apply.

*Venue.* Amends GS 35A-1204 to specify guidelines for establishing venue for the appointment of a guardian for an incompetent person. Venue may appropriately be in the county where the respondent resides or in any county where the respondent resided within six months before the date the proceeding began. Provides additional guidelines if a respondent's residence cannot be determined and criteria for transfer of venue in proceedings to appoint a guardian. Amends GS 35A-1205 regarding procedures for transfer to a different county by the clerk after (was, before or after) the appointment of a guardian for a minor or incompetent person. Amends GS 35A-1202 to define *home state* as used in the context of the act.

*Procedure.* Under current law, an application for guardianship may be filed concurrent with or subsequent to a petition for the adjudication of incompetence; this act separates the guidelines for filing a petition for adjudication of incompetence and an application for guardianship. Amends GS 35A-1210 to provide guidelines for placing a petition before the clerk (was, application before the clerk) to begin a proceeding to seek the appointment of a guardian for an incompetent person. Provides that any person, state, or local human services agency may file a petition with the clerk requesting the appointment of a guardian. Requires that the petition be verified and specifies criteria for the content of the petition. Enacts new GS 35A-1210.1 providing that any person, including a state or local human services agency, other than the petitioner, may file an application with the clerk seeking appointment as the respondent's guardian, if (1) a petition has been filed under GS 35A-1210 and the proceeding has not been dismissed, or (2) no order appointing a guardian has been entered. Requires that the application be verified and specifies criteria for the content of the application.

Amends GS 35A-1211 to include guidelines for service of the petition for adjudication and modifies rules governing parties, timelines, and methods of service. Enacts new GS 35A-1211.1 to specify that except as otherwise provided in the act, the Rules of Civil Procedure in GS Chapter 1A and the Rules of Evidence under GS Chapter 8C apply to proceedings to appoint a guardian for an incompetent person. Amends GS 35A-1211.5 to specify that the respondent has a right to trial by jury on the issue of competency. Amends GS 35A-1212 clarifying guidelines for the hearing on the petition and the rights of petitioner and respondent to present evidence. Also designates that the standard of proof for the clerk entering an order appointing a guardian for an incompetent person requires a finding by the clerk or the jury by clear, cogent, and convincing evidence that the respondent is incompetent.

*Appeals:* Enacts new GS 35A-1215.1 specifying that appeals of the clerk's order are to superior court under GS 1-301.1 (appeal of clerk's decision in civil actions) and that an appeal does not stop the appointment of a guardian unless the superior court or Court of Appeals orders a stay on the appointment. Amends GS 35A-1296, restoration to competency (was, proceedings before clerk), providing that the standard for a ward's appeal to superior court from the clerk's

order denying the ward 's petition to be restored to competency is pursuant to provisions of GS 1-301.3(c) through (e) governing appeal of a clerk's decision in civil cases (was, trial de novo).

*Portability:* Enacts new GS 35A-1289.1 establishing that a general guardian, guardian of the person, guardian of the estate, or similar court-appointed fiduciary, that is appointed in another state may take any action in or exercise any power in NC that is valid under the law of the state in which the guardian was appointed if the ward is not a resident of NC. Enacts new GS 35A-1289.2 making additional provisions governing the issuance of guardianship letters by the clerk to foreign guardians, responsibilities of the foreign guardian to file for letters of appointment, and rights of the ward file an objection to the issuance of letters of appointment. Enacts new GS 35A-1289.3 specifying guidelines for the transfer of a guardianship to another state.

Makes additional changes, enacting new GS 35A-1282 providing for payment of debt and delivery of property to a foreign guardian without necessitating a local proceeding and setting forth guidelines governing such a transaction.

The act recodifies definitions in GS 35A-1101(1) and (2), (5), (7) through (13), and(15) through (16) respectively as GS 35A-1202(1a) and (1b), (4a), (10a) and (10b), (11a) through (11e), (13a), and (14a), respectively. Makes additional conforming and technical changes.

**Intro. by Goodwin.**

GS 35A