

March 26, 2009

S 932. GUARDIANSHIP/INCOMPETENCY. Filed 3/25/09. *TO AMEND THE PROCEDURES FOR DETERMINING INCOMPETENCY UNDER THE LAWS RELATING TO GUARDIANSHIP, AS RECOMMENDED BY THE HOUSE STUDY COMMITTEE ON STATE GUARDIANSHIP LAWS.*

Directs the Revisor of Statutes to replace terms in GS Chapter 35A (incompetency and guardianship) wherever they occur as follows: (1) *incompetent* with *incapacitated*, (2) *incompetency* with *incapacity*; (3) *competency* with *legal capacity*, and (4) *competent* with *not incapacitated*, unless the terms are otherwise amended by the act. Makes substantive changes in GS 35A-1101, including eliminating a list of terms from the definitions section, eliminating and replacing other terms, and defining the replacement terms. Amends GS 35A-1111, requiring a professional evaluation (was, multidisciplinary evaluation) to assist in determining the nature and extent of a respondent's incapacity (was, disability) or in developing an appropriate guardianship plan. Directs that the clerk order a professional evaluation upon request of the respondent, respondent's counsel, or guardian ad litem, and permits the clerk to order a professional evaluation for the purpose of being evaluated. Specifies the content of the evaluation. Amends GS 35A-1108 and GS 35A-1116 to make conforming changes. Amends GS 35A-1112, requiring that if the clerk is the finder of fact, the clerk must (was, may) include findings on the nature and extent of the ward's incapacity in the order. Amends GS 35A-1120 by providing that a guardian may (was, shall) be appointed for a person judged to be incapacitated. Amends GS 35A-1210 to provide content guidelines for an application before the clerk for a plenary guardianship or a limited guardianship. Amends GS 35A-1212 to require that the clerk make inquiry and receive evidence to determine if the ward's needs may be met by means other than appointment of a guardian. Amends GS 35A-1215 by providing that the clerk may not appoint a guardian unless the clerk finds that the ward's needs cannot be met by other means. Directs that the clerk grant to a guardian only the powers necessitated by the ward's limitations and make appointive or other orders that encourage the development of the ward's maximum self-reliance and independence. Makes conforming and technical changes to GS 35A-1130(c) and GS 35A-1202. Makes other conforming and technical changes. Effective October 1, 2009, and applies to filings on or after that date.

Intro. by Clary.

GS 35A