

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 817  
PROPOSED SENATE COMMITTEE SUBSTITUTE H817-PCS10542-TJ-65

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

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED  
AN ACT ENACTING THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE  
PROCEEDINGS JURISDICTION ACT OF 2016.

The General Assembly of North Carolina enacts:

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

**"Chapter 35B.**

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

"Article 1.

"General Provisions.

**"§ 35B-1. Short title.**

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

**"§ 35B-2. Definitions.**

The following definitions apply in this Chapter:

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



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

10 **"§ 35B-3. Proceedings governed by other law.**

11       This Chapter does not govern the following:

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

16 **"§ 35B-4. International application.**

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

19 **"§ 35B-5. Communication between courts.**

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

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

27 **"§ 35B-6. Cooperation between courts.**

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

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

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

50 **"§ 35B-7. Taking testimony in another state.**



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 order  
5                 is not pending in a court of that state or another significant-connection  
6                 state, and, before the court makes the appointment or issues the order,  
7                 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 forum  
13                         under the factors set forth in G.S. 35B-13; or

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

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 to  
22                 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 State  
31                 and this State was not the respondent's home state on the date the petition was filed, the court shall  
32                 dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is  
33                 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 issued a  
36                 protective order consistent with this Chapter has exclusive and continuing jurisdiction over the  
37                 proceeding until it is terminated by the court or the appointment or order expires by its own terms.

38     **"§ 35B-13. Appropriate forum.**

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

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

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

48                (1)     Any expressed preference of the respondent.

49                (2)     Whether abuse, neglect, or exploitation of the respondent has occurred or is  
50                         likely to occur and which state could best protect the respondent from the  
51                         abuse, neglect, or exploitation.

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

12   **"§ 35B-14. Jurisdiction declined by reason of conduct.**

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

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

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

39   **"§ 35B-15. Notice of proceeding.**

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

46   **"§ 35B-16. Proceedings in more than one state.**

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



1 **"§ 35B-18. Accepting guardianship or guardian of the estateship transferred from another**  
2 **state.**

3 (a) To confirm transfer of a guardianship or guardian of the estateship transferred to this  
4 State under provisions similar to G.S. 35B-17, the guardian or guardian of the estate must petition  
5 the court in this State to accept the guardianship or guardian of the estateship. The petition must  
6 include a certified copy of the other state's provisional order of transfer.

7 (b) Notice of a petition under subsection (a) of this section must be given to those persons  
8 that would be entitled to notice if the petition were a petition for the appointment of a guardian or  
9 issuance of a protective order in both the transferring state and this State. The notice must be given  
10 in the same manner as notice is required to be given in this State.

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

14 (d) The court shall issue an order provisionally granting a petition filed under subsection  
15 (a) of this section unless either of the following is true:

16 (1) An objection is made and the objector establishes that transfer of the  
17 proceeding would be contrary to the interests of the incapacitated or protected  
18 person.

19 (2) The guardian or guardian of the estate is ineligible for appointment in this State.

20 (e) The court shall issue a final order accepting the proceeding and appointing the guardian  
21 or guardian of the estate as guardian or guardian of the estate in this State upon its receipt from the  
22 court from which the proceeding is being transferred of a final order issued under provisions  
23 similar to G.S. 35B-17 transferring the proceeding to this State.

24 (f) Not later than 90 days after issuance of a final order accepting transfer of a  
25 guardianship or guardian of the estateship, the court shall determine whether the guardianship or  
26 guardian of the estateship needs to be modified to conform to the law of this State.

27 (g) In granting a petition under this section, the court shall recognize a guardianship or  
28 guardian of the estateship order from the other state, including the determination of the  
29 incapacitated or protected person's incapacity and the appointment of the guardian or guardian of  
30 the estate.

31 (h) The denial by a court of this State of a petition to accept a guardianship or guardian of  
32 the estateship transferred from another state does not affect the ability of the guardian or guardian  
33 of the estate to seek appointment as guardian or guardian of the estate in this State under Subpart  
34 II of Chapter 35 of the General Statutes if the court has jurisdiction to make an appointment other  
35 than by reason of the provisional order of transfer.

36 "Article 4.

37 "Registration and Recognition of Orders From Other States.

38 **"§ 35B-19. Registration of guardianship orders.**

39 If a guardian has been appointed in another state and a petition for the appointment of a  
40 guardian is not pending in this State, the guardian appointed in the other state, after giving notice  
41 to the appointing court of an intent to register, may register the guardianship order in this State by  
42 filing as a foreign judgment in a court, in any appropriate county of this State, certified copies of  
43 the order and letters of office.

44 **"§ 35B-20. Registration of protective orders.**

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

51 **"§ 35B-21. Effect of registration.**

