



HOUSE BILL 817: Enact Uniform Law on Adult Guardianship.

2015-2016 General Assembly

Committee:		Date:	August 5, 2016
Introduced by:		Prepared by:	Jennifer H. Bedford
Analysis of:	S.L. 2016-72		Legislative Analyst

OVERVIEW: *S.L. 2016-72 establishes the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act in North Carolina to clarify the ambiguity in the law concerning the proper jurisdiction in guardianship proceedings when more than one state is involved. The act expands related definitions and provides direction to courts, attorneys, guardians, and individuals in respect to multiple appointments of guardians, the transferability of guardianship, and interstate recognition of guardianship orders. This act brings North Carolina law into conformity with the law of neighboring states and provides a uniform process for interstate cooperation between courts.*

This act becomes effective December 1, 2016, and applies to multistate guardianship and protective proceedings initiated on or after that date. Please see the full summary for more detail regarding proceedings that are initiated prior to December 1, 2016.

BILL ANALYSIS: The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) was approved by the Uniform Law Commission in the summer of 2007. To date, forty states, the District of Columbia, and Puerto Rico have enacted this uniform legislation. UAGPPJA is a narrowly focused act that does not change the substantive guardianship law of North Carolina. Rather it addresses the interstate jurisdictional issues that occur. Specifically, UAGPPJA addresses three problems that impact guardianship law: multiple appointments, transferability, and interstate recognition of orders.

1. Multiple Appointments.

UAGPPJA provides a solution based on the same rules that North Carolina applies to child custody disputes: the court of the protected person's "home state" will have first priority to exercise its jurisdiction. The home state is defined as the state in which the person to be protected was last physically present for at least six consecutive months immediately before the commencement of the guardianship proceeding. Exceptions apply for short-term orders in case of an emergency. Once a court has jurisdiction over the guardianship proceeding, the jurisdiction continues until the proceeding is terminated or transferred. Continuing jurisdiction will reduce the number of multiple orders, reduce litigation costs, and provide individuals with orders that will be valid and accepted throughout the country.

2. Transferability.

UAGPPJA provides a method for courts of different states to cooperate on transfers. The

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guardian or conservator first requests a transfer order from the transferring state's court, contingent on acceptance by the other state's court. All interested parties must be notified of the proposed transfer. The guardian then presents the transfer order to the court that will oversee the guardianship in the accepting state. If that court agrees to accept it, both courts will issue final orders completing the transfer. The court also has discretion to refuse a transfer and require a new proceeding when appropriate.

Interstate Recognition.

Finally, UAGPPJA allows a guardian to register the order in other states in the same way any other foreign court judgment can be registered for enforcement. Upon registration with the court, the guardian may exercise all powers authorized in the order of appointment except those prohibited under the laws of the registering state.

EFFECTIVE DATE: This act becomes effective December 1, 2016, and applies to multi-state guardianship and protective proceedings initiated on or after that date. Articles 1, 3, and 4 of Chapter 35B of the General Statutes, as enacted by Section 1 of this act, and G.S. 35B-22 and G.S. 35B-23, as enacted by Section 1 of this act, apply to proceedings initiated prior to December 1, 2016, regardless of whether a guardianship or protective order has been issued.

Benjamin Orzeske, Legislative Counsel to the Uniform Law Commission, substantially contributed to this summary.