

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 766

Short Title: Modify Guardianship Standards.

(Public)

Sponsors: Senators Carpenter, Lucas; and Garwood.

Referred to: Judiciary I.

April 2, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO MODIFY THE DUTY OF A GUARDIAN WITH RESPECT TO
3 MEDICAL TREATMENT OF A WARD AND TO MODIFY THE STANDARDS
4 FOR REMOVAL OF A GUARDIAN BY THE CLERK OF COURT.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 35A-1241(a) reads as rewritten:

7 "(a) To the extent that it is not inconsistent with the terms of any order of the clerk
8 or any other court of competent jurisdiction, a guardian of the person has the following
9 powers and duties:

10 (1) The guardian of the person is entitled to custody of the person of his
11 ward and shall make provision for his ward's care, comfort, and
12 maintenance, and shall, as appropriate to the ward's needs, arrange for
13 his training, education, employment, rehabilitation or habilitation. The
14 guardian of the person shall take reasonable care of the ward's
15 clothing, furniture, vehicles, and other personal effects that are with
16 the ward.

17 (2) The guardian of the person may establish the ward's place of abode
18 within or without this State. In arranging for a place of abode, the
19 guardian of the person shall give preference to places within this State
20 over places not in this State if in-State and out-of-State places are
21 substantially equivalent. He also shall give preference to places that
22 are not treatment facilities. If the only available and appropriate places
23 of domicile are treatment facilities, he shall give preference to
24 community-based treatment facilities, such as group homes or nursing
25 homes, over treatment facilities that are not community-based.

26 (3) The guardian of the person may give any consent or approval that may
27 be necessary to enable the ward to receive medical, legal,
28 psychological, or other professional care, counsel, treatment, or

1 service. He may not, however, consent to the sterilization of a mentally
2 ill or mentally retarded ward. Such sterilization may be performed only
3 after compliance with Chapter 35, Article 7. Absent grounds for
4 refusing artificial life support treatment pursuant to G.S. 90-322, the
5 guardian may not direct that artificial life support treatment be refused
6 or removed from the ward without an order from the clerk. The
7 guardian of the person may give any other consent or approval on the
8 ward's behalf that may be required or in the ward's best interest. He
9 may petition the clerk for the clerk's concurrence in the consent or
10 approval."

11 **SECTION 2.** G.S. 35A-1290(b) reads as rewritten:

12 "(b) It is the clerk's duty to remove a guardian or to take other action sufficient to
13 protect the ward's interests in the following cases:

- 14 (1) The guardian wastes the ward's money or estate or converts it to his
15 own use.
- 16 (2) The guardian in any manner mismanages the ward's estate.
- 17 (3) The guardian neglects to care for or maintain the ward or his
18 dependents in a suitable manner.
- 19 (3a) The guardian physically neglects, abuses, or exploits the ward by overt
20 acts or omissions.
- 21 (4) The guardian or his sureties are likely to become insolvent or to
22 become nonresidents of the State.
- 23 (5) The original appointment was made on the basis of a false
24 representation or a mistake.
- 25 (6) The guardian has violated a fiduciary duty through default or
26 misconduct.
- 27 (7) The guardian has a private interest, whether direct or indirect, that
28 might tend to hinder or be adverse to carrying out his duties as
29 guardian."

30 **SECTION 3.** This act is effective when it becomes law and applies to acts or
31 omissions occurring on or after that date.