



# SENATE BILL 615: Adoption Law/Notary Changes/Guardianship Rights.

2023-2024 General Assembly

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<b>Committee:</b>		<b>Date:</b>	December 5, 2023
<b>Introduced by:</b>		<b>Prepared by:</b>	Debbie Griffiths Staff Attorney
<b>Analysis of:</b>	S.L. 2023-124		

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**OVERVIEW:** *S.L. 2023-134 made the following changes:*

- *Section 1 of S.L. 2023-124 allows a former stepparent to adopt an adult adoptee.*
- *Section 2 of S.L. 2023-124 modifies the law related to the redaction of certain information from a preplacement assessment.*
- *Section 3 of S.L. 2023-124 expands the acknowledgment options related to agency relinquishments for adoption.*
- *Section 4.1 of S.L. 2023-124 allows the notary the option to maintain a journal of all notarial acts.*
- *Section 4.2 of S.L. 2023 requires that an electronic notary who performs remote notarizations to enter information regarding the remote electronic notarization in an electronic journal notwithstanding the provisions of Section 4.1 of S.L. 2023-124.*
- *Section 5 of S.L. 2023-124 requires a general guardian or guardian of the estate to elect a fiscal year-end date upon the filing of the initial annual account, or if made in a subsequent year, with the clerk's permission, and to file each annual account within 30 days after the elected fiscal year-end unless the time for filing has been extended by the clerk.*
- *Section 6 of S.L. 2023-124 provides that a petition for judicial relief challenging the authority of an agent holding a power of attorney or the way that authority has been exercised can be dismissed only upon motion filed by the principal acting individually, and not through the agent.*
- *Section 7 of S.L. 2023-124 modifies the guardianship statutes contained in Chapter 35A of the North Carolina General Statutes including informing the respondent of their rights before and after an adjudication of incompetency and using the least restrictive alternatives to protect the individual found to be incompetent.*

*This act has various effective dates. Please see the full summary for more details.*

## **CURRENT LAW AND BILL ANALYSIS:**

### **PART I. ADOPTION OF ADULT ADOPTEE BY FORMER STEPPARENT**

Chapter 48 of the General Statutes contains the laws relating to adoptions. Adoption is a legal proceeding that creates a parent and child relationship between the adoptee and adopting parent. After a decree of adoption is entered, an adoptee has the same legal status as if the adoptee were the biological child of the adopting parent. Either a child or an adult can be adopted. A married couple or an individual, including a stepparent, can file a petition to adopt either a child or an adult. A "stepparent" means an individual who

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is the spouse of a parent of a child, but who is not a legal parent of the child. G.S. 48-1-101(18). A decree of adoption severs the relationship of parent and child between the individual and the individuals biological or previous adoptive parent, except an adoption by a stepparent (or a readoption) does not have any effect on the relationship between the parent who is the stepparent's spouse. G.S. 48-1-106.

**Section 1** of S.L. 2023-124 modifies G.S. 48-1-101 by adding a new definition for the term "former stepparent" which means an individual who was the spouse of a parent of a child, but who is not a genetic parent or adoptive parent of the child, and who has become divorced from the parent of the child. This section also modifies G.S. 48-1-106 to provide that the adoption of an adult adoptee by a former stepparent does not sever the parent and child relationship between the adoptee and parent who is the stepparent's former spouse.

This section becomes effective January 1, 2024.

## **PART II. REDACTION OF INFORMATION FROM ADOPTION HOME STUDY**

There are different manners in which an adoptee can be placed with an adopting parent. G.S. 48-3-202 governs direct placement adoptions, which is when a parent or guardian personally selects a prospective adoptive parent. G.S. 48-3-303 contains the required content and timing of the preplacement assessment, commonly called a home study. A preplacement assessment is an evaluation of a person seeking to adopt to determine whether the person is a suitable parent. G.S. 48-3-202 and G.S. 48-3-303 both provide that the agency preparing the preplacement assessment can redact certain information from the assessment.

**Section 2** of S.L. 2023-124 modifies G.S. 48-3-202 and G.S. 48-3-303 by removing the provision that an agency preparing the assessment can redact certain information and providing that this information can generally be redacted from the placement assessment.

This section becomes effective January 1, 2024.

## **PART III. EXPAND ACKNOWLEDGMENT OPTIONS FOR AGENCY RELINQUISHMENTS FOR ADOPTION**

G.S. 48-3-701 and G.S. 48-3-702 contain procedures for when a parent wishes to relinquish their parental rights to an approved agency to place the child for adoption, and this includes certain procedures outlined in G.S. 48-3-605.

**Section 3** of S.L. 2023-124 permits certain listed individuals, including a teacher or a social worker, to identify a parent or adoptee who has not reached the age of 18 years of age for the purposes of administering oaths.

This section becomes effective January 1, 2024.

## **PART IV. NOTARY CHANGES**

Section 4.1 of S.L. 2023-124 allows the notary the option to maintain a journal of all notarial acts. Section 4.2 of S.L. 2023 requires that an electronic notary who performs remote notarizations to enter information regarding the remote electronic notarization in an electronic journal notwithstanding the provisions of Section 4.1 of S.L. 2023-124.

Section 4.1 became effective September 28, 2023 and Section 4.2 becomes effective July 1, 2024.

## **PART V. GUARDIANSHIP ANNUAL ACCOUNTING CHANGES**

Article 10 (Returns and Accounting) of Chapter 35A of the General Statutes (Incompetency and Guardianship) requires general guardians and guardians of the estate to file annual accounts of the ward's

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estate with the clerk of superior court. The initial account must be filed within 30 days after the expiration of one year from the date of the guardian's appointment or qualification, and annually thereafter for as long as any of the ward's estate remains within the guardian's control.

**Section 5** of S.L. 2023-124 requires:

- The guardian, upon filing the first annual account, to elect the date of the fiscal year-end for all accounts, which must not be fewer than eleven months nor more than twelve months from the date of the guardian's qualification or appointment.
- Each annual account to be filed within 30 days after the elected fiscal year-end unless the time for filing has been extended by the clerk.

This section becomes effective January 1, 2024, and applies to annual accountings filed on or after that date.

## **PART VI. PREVENT ABUSE OF AUTHORITY IN POWERS OF ATTORNEY**

Under the North Carolina Uniform Power of Attorney Act, Chapter 32C of the General Statutes, clerks of superior court are authorized, upon motion by the principal under a power of attorney, to dismiss a petition seeking to compel an accounting by the agent holding the power of attorney, to suspend or terminate the agent's authority, to determine the agent's compensation and expenses, or to determine the agent's authority and powers.

**Section 6** provides that the clerk can dismiss such a petition only upon motion of the principal *acting individually* and not through the agent.

This section became effective September 28, 2023, and applies to proceedings filed on or after that date.

## **PART VII. CHANGES TO GUARDIANSHIP STATUTES**

In a proceeding to adjudicate competency, a respondent is deemed to be incompetent if the respondent lacks sufficient capacity to manage the respondent's own affairs or to make or communicate important decisions concerning the respondent's person, family, or property, whether this is the result of mental illness, intellectual disability, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition. For minors, the incapacity must be by reason of something other than minority.

**Section 7.1** provides that a respondent is not incompetent if, by means of a "less restrictive alternative," the respondent can manage respondent's own affairs and communicate important decisions concerning the respondent's person, family, and property. For this purpose, "less restrictive alternative" means an arrangement that enables the respondent to do these things with a restriction of fewer rights of the respondent than would occur with the adjudication of incompetency and appointment of a guardian. Such less restrictive alternatives include supported decision making, appropriate and available technological assistance, appointment of a representative payee, and appointment of an agent, including appointment under a health care or financial power of attorney.

**Section 7.2** requires a petition to include a statement identifying what less restrictive alternatives were considered before seeking adjudication and the reasons why those alternatives are insufficient to meet the respondent's needs.

**Sections 7.3 and 7.11** require the respondent's appointed guardian ad litem to explain the rights set forth in the notice of rights (required by Section 7.7 of S.L. 2023-124) at the time of the guardian ad litem's first personal visit with the respondent, and at any time thereafter upon the respondent's request.

**Sections 7.4 and 7.5** make conforming changes to include references to the notice of rights that would be required by Section 7.7 of S.L. 2023-124.

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**Section 7.6** provides that the court must tax costs, including attorneys' fees, incurred by any party against the respondent if the court the costs were incurred for the respondent's benefit, unless doing so would be inequitable. Costs are taxed against the petitioner upon a finding that the petitioner lacked reasonable grounds to bring the proceeding.

**Section 7.7** requires every respondent to be given a notice of his or her rights, substantially similar to the language set forth in the provided model notice, to include an explanation of the following rights:

- Rights of a respondent before an adjudication of incompetence:
  - Right to notice
  - Right to an attorney
  - Right to gather evidence
  - Right to a hearing
  - Right to a jury
  - Right to a closed hearing
  - Right to present evidence and testimony
  - Right to call and question witnesses
  - Right to express wishes regarding the respondent's rights
  - Right to appeal
- Rights of a ward after an adjudication of incompetence:
  - Right to a qualified, competent guardian
  - Right to request transfer to another county
  - Right to request restoration of the ward's competency
  - Right to request a review of modification of the ward's guardianship
  - Right to vote
  - Right to request a hearing in a petition for procedure to permit sterilization
  - Right to request the DMV to review a decision to revoke the ward's license
  - Additional rights depending on whether the ward has the capacity to exercise the right

**Section 7.8** states the following public policy governing the appointment of guardians:

- For adults, guardianship is a last resort only to be imposed if less restrictive alternatives have been considered and found to be insufficient to meet the adult's needs.
- The regular filing of status reports by general guardians and guardians of the person concerning the ward's conditions and welfare is encouraged and should be required whenever appropriate.

**Section 7.9** authorizes a clerk, on the clerk's own motion, to request modification of the order appointing a guardian or consideration of any other matter pertaining to the guardianship.

**Section 7.10** requires that when exercising the clerk's discretion in appointing a guardian, highest priority must be given to an individual or entity nominated as guardian in a power of attorney or health care power of attorney executed by the respondent prior to the commencement of the guardianship proceeding.

**Section 7.12** requires a guardian of the person to notify the clerk of a change in the ward's address within 30 days.

This Part becomes effective January 1, 2024, and applies to petitions filed on or after that date.

\*Robert Ryan and Bill Patterson, Staff Attorneys in the Legislative Analysis Division, substantially contributed to this summary.