

FOR APPROVAL

**UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE
PROCEEDINGS JURISDICTION ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

SECTION 102. DEFINITIONS. In this [act]:

- (1) “Adult” means an individual who has attained [18] years of age.
- (2) “Conservator” means a person appointed by the court to administer the property of an adult, including a person appointed under [insert reference to enacting state’s conservatorship or protective proceedings statute].
- (3) “Guardian” means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under [insert reference to enacting state’s guardianship statute].
- (4) “Guardianship order” means an order appointing a guardian.
- (5) “Guardianship proceeding” means a proceeding in which an order for the appointment of a guardian is sought or has been issued.
- (6) “Home state” means the state in which the respondent was physically present for at least six consecutive months immediately before the filing of a petition for the appointment of a guardian or protective order. A period of temporary absence counts as part of the six-month period.
- (7) “Incapacitated person” means an adult for whom a guardian has been appointed.
- (8) “Party” means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.
- (9) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- (10) “Protected person” means an adult for whom a protective order has been made.

(11) “Protective order” means an order appointing a conservator or another court order related to management of an adult’s property.

(12) “Protective proceeding” means a judicial proceeding in which a protective order is sought or has been issued.

(13) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) “Respondent” means an adult for whom a protective order or the appointment of a guardian is sought.

(15) “Significant-connection state” means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available. Determination of whether a respondent has a significant connection with a particular state shall include consideration of the following factors:

(A) the location of the respondent’s family and others required to be notified of the guardianship or protective proceeding;

(B) the length of time the respondent at any time was physically present in the state and the duration of any absences;

(C) the location of the respondent’s property; and

(D) the extent to which the respondent has other ties to the state such as voting registration, filing of state or local tax returns, vehicle registration, driver’s license, social relationships, and receipt of services.

(16) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 103. INTERNATIONAL APPLICATION OF [ACT]. A court of this state may treat a foreign country as if it were a state for the purpose of applying [Articles] 1, 2, 3, and 5.

SECTION 104. COMMUNICATION BETWEEN COURTS.

(a) A court of this state may communicate with a court in another state concerning a

proceeding arising under this [act]. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b), the court [shall] [may] make a record of the communication. The record may be limited to the fact that the communication occurred.

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

SECTION 105. COOPERATION BETWEEN COURTS.

(a) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to:

(1) hold an evidentiary hearing;

(2) order a person in that state to produce or give evidence pursuant to procedures of that state;

(3) order that an evaluation or assessment be made of the respondent, or order any appropriate investigation of a person involved in a proceeding;

(4) forward to the court of this state a certified copy of the transcript or other record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise presented under paragraph (2), and any evaluation or assessment prepared in compliance with the request under paragraph (3);

(5) issue any other order necessary to assure the appearance of a person necessary to make a determination, including the respondent or the incapacitated or protected person; and

(6) issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 Code of Federal Regulations Section 164.504 [, as amended].

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

SECTION 106. TAKING TESTIMONY IN ANOTHER STATE.

(a) In a guardianship or protective proceeding, in addition to other procedures that may

be available, testimony of witnesses who are located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

[(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.]

[ARTICLE] 2
JURISDICTION

SECTION 201. DEFINITION. In this [article], “emergency” means circumstances that likely will result in substantial harm to a respondent’s health, safety, or welfare, and in which the appointment of a guardian is necessary because no other person has authority to and is willing to act on the respondent’s behalf.

SECTION 202. EXCLUSIVE BASIS. This [article] provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

SECTION 203. INITIAL JURISDICTION. In addition to the limited or special jurisdiction under Section 204, a court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) this state was the respondent’s home state on the date a petition for the appointment of a guardian or protective order was filed, or was the home state of the respondent within six months before the date the petition was filed;

(2) this state is a significant-connection state and:

(A) the respondent did not have a home state on the date the petition was filed or within six months before the petition was filed, or a court of that state has declined to exercise jurisdiction under Section 206 because this state is a more appropriate forum; or

(B) a petition for the appointment of a guardian or protective order has not been filed in a court having jurisdiction under paragraph (1) or in another significant-connection state, an objection to the jurisdiction of the court in this state has not been filed, and the court in this state concludes that it is an appropriate forum under the factors set forth in Section 206; or

(3) this state was not the home state on the date the petition was filed or within six months before the petition was filed, nor was this state a significant-connection state, and all such states have declined to exercise jurisdiction under Section 206 because this state is the more appropriate forum or no court has jurisdiction under paragraphs (1) or (2), and jurisdiction in this state is consistent with the constitutions of this state and the United States.

SECTION 204. SPECIAL CASES.

(a) A court of this state lacking jurisdiction under Section 203 has jurisdiction to do any of the following:

(1) appoint a guardian in an emergency for a term not exceeding [90] days for a respondent who is physically located in this state;

(2) issue a protective order with respect to real or tangible personal property located in this state;

(3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued as provided in Section 301.

(b) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed or within six months before the petition was filed, the court shall dismiss the proceeding at the direction of the court in such other state, if any, whether dismissal is requested before or after the emergency appointment.

SECTION 205. EXCLUSIVE AND CONTINUING JURISDICTION. Except as otherwise provided in Section 204, a court that has appointed a guardian or issued a protective order consistent with this [act] has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

SECTION 206. DECLINING JURISDICTION IF ANOTHER COURT IS A MORE APPROPRIATE FORUM.

(a) A court of this state having jurisdiction under Section 203 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a court of this state declines jurisdiction over a guardianship or protective proceeding under subsection (a), it shall either dismiss the proceeding or stay the proceeding. The court may impose any other condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or protective order be promptly filed in another state.

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

- (1) any expressed preference of the respondent;
- (2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
- (3) the length of time the respondent was physically located in or was a legal resident of this or another state;
- (4) the distance of the respondent from the court in each state;
- (5) the financial circumstances of the respondent's estate;
- (6) the nature and location of the evidence;
- (7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- (8) the familiarity of the court of each state with the facts and issues in the proceeding; and
- (9) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

SECTION 207. JURISDICTION DECLINED BY REASON OF CONDUCT.

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

- (1) decline to exercise jurisdiction;
- (2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or protective order is filed in a court of another state having jurisdiction; or
- (3) continue to exercise jurisdiction after considering:
 - (A) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(B) whether it is a more appropriate forum than the court of any other state under the factors set forth in Section 206(c); and

(C) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 203.

(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this [act].

SECTION 208. NOTICE OF PROCEEDING. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date a petition for the appointment of a guardian or protective order was filed, or within six months before the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the proceeding must be given by the petitioner to those persons who would be entitled to notice of the petition if the proceeding were brought in such other state, if any. The notice must be given in the same manner as notice is given in this state.

SECTION 209. PROCEEDINGS IN MORE THAN ONE STATE. Except for a petition for the appointment of a guardian in an emergency or a protective order limited to property located in this state as provided in Section 204, if a petition for the appointment of a guardian or protective order is filed in this and another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under Section 203, it may proceed with the case unless a court in another state acquires jurisdiction under Section 203 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under Section 203, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court

shall stay the proceeding and communicate with the court in the other state. If the court in the other state does not determine that the court in this state is a more appropriate forum, the court in this state shall dismiss the petition.

[ARTICLE] 3

TRANSFER OF JURISDICTION

SECTION 301. PETITION TO TRANSFER JURISDICTION TO ANOTHER STATE.

(a) Following the appointment of a guardian or conservator, the guardian or conservator may petition the court to transfer the guardianship or conservatorship to another state.

(b) Notice of the petition to transfer a guardianship or conservatorship under subsection (a) must be given by the petitioner to those persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(c) On the court's own motion or on request of the incapacitated or protected person, or another interested person, the court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The court shall issue a provisional order granting a petition to transfer a guardianship if the court finds that:

(1) the incapacitated person is physically located in or is reasonably expected to move permanently to the other state;

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person;

(3) the court is satisfied that plans for care and services for the incapacitated person in the other state are reasonable and sufficient; and

(4) the court is satisfied that the guardianship will be accepted by the court to which the proceeding will be transferred.

(e) The court shall issue a provisional order granting a petition to transfer a conservatorship if the court finds that:

(1) the protected person is physically located in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors set forth in Section 102(15);

(2) an objection to the transfer has not been made or, if an objection has been

made, the objector has not established that the transfer would be contrary to the interests of the protected person;

(3) the court is satisfied that adequate arrangements will be made for management of the protected person's property; and

(4) the court is satisfied that the conservatorship will be accepted by the court to which the proceeding will be transferred.

SECTION 302. PETITION TO ACCEPT PROCEEDING TRANSFERRED FROM ANOTHER STATE.

(a) Upon issuance of a provisional order in another state to transfer a guardianship or conservatorship to this state under procedures similar to those in Section 301, the guardian or conservator shall petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order.

(b) Notice of a petition under subsection (a) to accept a guardianship or conservatorship from another state must be given by the petitioner to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is given in this state.

(c) On the court's own motion or on request of the incapacitated or protected person, or another interested person, the court shall hold a hearing on a petition filed pursuant to subsection (a) to accept a guardianship or conservatorship from another state.

(d) The court shall issue a provisional order approving a petition filed under subsection (a) unless an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person.

(e) In approving a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator, if the guardian or conservator is eligible to act in this state.

(f) The denial of a petition filed under subsection (a) to accept a guardianship or conservatorship from another state does not affect the ability of a guardian or conservator

appointed by a court in another state to seek appointment as guardian of the incapacitated person or conservator of the protected person under [insert statutory references for the regular appointment of guardian or conservator].

SECTION 303. FINAL ORDER IN TRANSFERRING STATE. Upon receipt from the court of the other state of a provisional order issued under Section 302 to accept a guardianship or conservatorship transferred under Section 301 and the filing of the documents required in this state to terminate a guardianship or conservatorship, the court shall issue an order confirming the transfer of the proceeding to the other state and terminating the guardianship or conservatorship in this state.

SECTION 304. FINAL ORDER IN ACCEPTING STATE; JUDICIAL REVIEW.

(a) Upon receipt of an order issued under Section 303 confirming the transfer of a guardianship or conservatorship proceeding to this state and terminating the guardianship or conservatorship in the transferring state, the court shall issue a final order appointing the guardian or conservator as guardian or conservator in this state.

(b) Within [90] days after issuance of a final order accepting a guardianship or conservatorship transferred from another state, the court shall determine whether the guardianship or conservatorship need be modified to conform to the law of this state.

[ARTICLE] 4

REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

SECTION 401. REGISTRATION OF GUARDIANSHIP ORDERS. If a guardian has not been appointed in this state and a petition for the appointment of a guardian is not pending in this state, a guardian appointed in another state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court in any appropriate [county] of this state certified copies of the order and letters of office.

SECTION 402. REGISTRATION OF PROTECTIVE ORDERS. If a conservator has not been appointed in this state and a petition for a protective order is not pending in this state, a conservator appointed in another state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any [county] in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

SECTION 403. EFFECT OF REGISTRATION.

(a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(b) A court of this state may grant any relief available under this [act] and other law of this state to enforce a registered order.

[ARTICLE] 5

MISCELLANEOUS PROVISIONS

SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 503. REPEALS. The following acts and parts of acts are hereby repealed:

- (1)
- (2)
- (3)

SECTION 504. EFFECTIVE DATE. This [act] takes effect

SECTION 505. TRANSITIONAL PROVISION.

(a) This [act] applies to guardianship and protective proceedings begun on or after [the effective date].

(b) For proceedings begun before [the effective date], whether or not a guardianship or protective order has been issued, Articles 1, 3, 4 and Sections 501 and 502 of this [act] apply.