

D R A F T

FOR DISCUSSION ONLY

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

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

Interim Draft with Style Committee Changes Incorporated

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ON UNIFORM STATE LAWS

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June 2, 2007

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JURISDICTION ACT**

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1 **UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS**

2 **JURISDICTION ACT**

3 **[ARTICLE] 1**

4 **GENERAL PROVISIONS**

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

7 **SECTION 102. DEFINITIONS.** In this [act]:

8 (1) “Adult” means an individual who has attained [18] years of age.

9 (2) “Conservator” means a person appointed by the court to administer the property of an
10 adult, including a person appointed under [insert reference to enacting state’s conservatorship or
11 protective proceedings statute].

12 (3) “Guardian” means a person appointed by the court to make decisions regarding the
13 person of an adult, including a person appointed under [insert reference to enacting state’s
14 guardianship statute].

15 (4) “Guardianship order” means an order appointing a guardian.

16 (5) “Guardianship proceeding” means a proceeding in which an order for the
17 appointment of a guardian is sought or has been issued.

18 (6) “Home state” means the state in which the respondent was physically present for at
19 least six consecutive months immediately before the filing of a petition for the appointment of a
20 guardian or protective order. A period of temporary absence counts as part of the six-month
21 period.

22 (7) “Incapacitated person” means an adult for whom a guardian has been appointed.

1 (8) "Party" means the respondent, petitioner, guardian, conservator, or any other person
2 allowed by the court to participate in a guardianship or protective proceeding.

3 (9) "Person" means an individual, corporation, business trust, estate, trust, partnership,
4 limited liability company, association, joint venture, government or governmental subdivision,
5 agency, or instrumentality, public corporation, or any other legal or commercial entity.

6 (10) "Protected person" means an adult for whom a protective order has been made.

7 (11) "Protective order" means an order appointing a conservator or another court order
8 related to management of an adult's property.

9 (12) "Protective proceeding" means a judicial proceeding in which a protective order is
10 sought or has been issued.

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

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

15 (15) "Significant-connection state" means a state, other than the home state, with which a
16 respondent has a significant connection other than mere physical presence and in which
17 substantial evidence concerning the respondent is available, including:

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

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

22 (C) the location of the respondent's property; and

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

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

7 **SECTION 103. INTERNATIONAL APPLICATION OF [ACT].**

8 (a) A court of this state shall treat a foreign country as if it were a state for the purpose of
9 applying [Articles] 1, 2, and 3.

10 (b) Except to the extent such order violates fundamental principles of human rights, a
11 guardianship or protective order of a foreign country made under factual circumstances in
12 substantial conformity with the jurisdictional standards of this [act] may be registered and
13 enforced under [Article] 4.

14 **SECTION 104. COMMUNICATION BETWEEN COURTS.**

15 (a) A court of this state may communicate with a court in another state concerning a
16 proceeding arising under this [act]. The court may allow the parties to participate in the
17 communication.

18 (b) Except as otherwise provided in subsection (c), the court shall make a record of a
19 communication under this section, and promptly inform the parties of the communication and
20 grant them access to the record.

21 (c) Courts may communicate concerning schedules, calendars, court records, and similar
22 matters without informing the parties or making a record.

1 **SECTION 105. COOPERATION BETWEEN COURTS.**

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

4 (1) hold an evidentiary hearing;

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

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

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

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

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

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

1 **SECTION 106. TAKING TESTIMONY IN ANOTHER STATE.**

2 (a) In a guardianship or protective proceeding, in addition to other procedures that may
3 be available, testimony of witnesses who are located in another state may be offered by
4 deposition or other means allowable in this state for testimony taken in another state. The court
5 on its own motion may order that the testimony of a witness be taken in another state and may
6 prescribe the manner in which and the terms upon which the testimony is to be taken.

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

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

1 [ARTICLE] 2

2 JURISDICTION

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

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

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

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

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

17 (A) the respondent does not have a home state or a court of the home state has
18 declined to exercise jurisdiction under Section 206 because this state is a more appropriate
19 forum; or

20 (B) a petition for the appointment of a guardian or protective order has not been
21 filed in the respondent’s home state or another significant-connection state, an objection to the
22 jurisdiction of the court in this state has not been filed, and the court in this state concludes that it

1 is an appropriate forum under the factors set forth in Section 206; or

2 (3) this state is neither the home state nor a significant-connection state but the home
3 state and all significant-connection states have declined to exercise jurisdiction under Section
4 206 because this state is the more appropriate forum, or the respondent does not have a home
5 state or significant-connection state.

6 **SECTION 204. SPECIAL CASES.**

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

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

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

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

16 (b) If a petition for the appointment of a guardian in an emergency is brought in this state
17 and this state is not the respondent's home state, the court shall dismiss the proceeding at the
18 direction of the court in the respondent's home state, whether dismissal is requested before or
19 after the emergency appointment.

20 **SECTION 205. EXCLUSIVE AND CONTINUING JURISDICTION.** Except as
21 provided in Section 204, a court that has appointed a guardian or issued a protective order
22 consistent with this [act] has exclusive and continuing jurisdiction over the proceeding until it is

1 terminated by the court or the appointment or order expires by its own terms.

2 **SECTION 206. DECLINING JURISDICTION IF ANOTHER COURT MORE**
3 **APPROPRIATE FORUM.**

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

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

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

14 (1) any expressed preference of the respondent;

15 (2) whether abuse, neglect, or exploitation of the respondent has occurred or is
16 likely to occur and which state could best protect the respondent from the abuse, neglect, or
17 exploitation;

18 (3) the length of time the respondent was physically located in or was a legal
19 resident of this or another state;

20 (4) the distance of respondent from the court in each state;

21 (5) the financial circumstances of the respondent's estate;

22 (6) the nature and location of the evidence;

1 (7) the ability of the court in each state to decide the issue expeditiously and the
2 procedures necessary to present evidence;

3 (8) the familiarity of the court of each state with the facts and issues in the
4 proceeding; and

5 (9) if an appointment were made, the court's ability to monitor the conduct of the
6 guardian or conservator.

7 **SECTION 207. JURISDICTION DECLINED BY REASON OF CONDUCT.**

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

10 (1) decline to exercise jurisdiction;

11 (2) exercise jurisdiction for the limited purpose of fashioning an appropriate
12 remedy to ensure the health, safety, and welfare of the respondent or the protection of the
13 respondent's property or prevent a repetition of the unjustifiable conduct, including staying the
14 proceeding until a petition for the appointment of a guardian or protective order is filed in a court
15 of another state having jurisdiction; or

16 (3) continue to exercise jurisdiction after considering:

17 (A) the extent to which the respondent and all persons required to be
18 notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

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

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

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

8 **SECTION 208. NOTICE OF PROCEEDING.** If a petition for the appointment of a
9 guardian or issuance of a protective order is brought in this state and this state is not the
10 respondent's home state, in addition to complying with the notice requirements of this state,
11 notice of the proceeding must be given to those persons who would be entitled to notice of the
12 petition if the proceeding were brought in the respondent's home state. The notice must be given
13 in the same manner as notice is given in this state.

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

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

22 (2) If the court in this state does not have jurisdiction under Section 203, whether at the

1 time the petition is filed or at any time before the appointment or issuance of the order, the court
2 shall stay the proceeding and communicate with the court in the other state. If the court in the
3 other state does not determine that the court in this state is a more appropriate forum, the court
4 shall dismiss the petition.

1 [ARTICLE] 3

2 TRANSFER OF JURISDICTION

3 SECTION 301. PETITION TO TRANSFER JURISDICTION TO ANOTHER
4 STATE.

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

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

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

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

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

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

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

22 (4) the court is satisfied that the guardianship will be accepted by the court to

1 which the proceeding will be transferred.

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

4 (1) the protected person is physically located in or is reasonably expected to move
5 permanently to the other state, or the protected person has a significant connection to the other
6 state considering the factors set forth in Section 103(15);

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

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

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

14 **SECTION 302. PETITION TO ACCEPT PROCEEDING TRANSFERRED FROM**
15 **ANOTHER STATE.**

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

20 (b) Notice of a petition under subsection (a) to accept a guardianship or conservatorship
21 from another state must be given to those persons that would be entitled to notice if the petition
22 were a petition for the appointment of a guardian or issuance of a protective order in both the

1 transferring state and this state. The notice must be given in the same manner as notice is given
2 in this state.

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

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

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

13 (f) The denial of a petition filed under subsection (a) to accept a guardianship or
14 conservatorship from another state does not affect the ability of a guardian or conservator
15 appointed by a court in another state to seek appointment as guardian of the incapacitated person
16 or conservator of the protected person under [insert statutory references for the regular
17 appointment of guardian or conservator].

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

1 conservatorship in this state.

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

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

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

1 [ARTICLE] 4

2 REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

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

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

15 SECTION 403. EFFECT OF REGISTRATION.

16 (a) Upon registration of a guardianship or protective order from another state, the
17 guardian or conservator may exercise in this state all powers authorized in the order of
18 appointment except as prohibited under the laws of this state, including maintaining actions and
19 proceedings in this state.

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

1 [ARTICLE] 5

2 MISCELLANEOUS PROVISIONS

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

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

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

- 13 (1)
- 14 (2)
- 15 (3)

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