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FOR DISCUSSION ONLY

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

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

Draft for Committee on Style Meeting, May 30 - June 3, 2007

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ON UNIFORM STATE LAWS

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May 2, 2007

**DRAFTING COMMITTEE ON UNIFORM ADULT GUARDIANSHIP AND
PROTECTIVE PROCEEDINGS JURISDICTION ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

DAVID G. NIXON, 2340 Green Acres Rd., Suite 12, Fayetteville, AR 72703, *Chair*

GAIL H. HAGERTY, Burleigh County Court House, P.O. Box 1013, 514 E. Thayer Ave.,
Bismarck, ND 58502-1013

LYLE W. HILLYARD, 175 E 1st St. N, Logan, UT 84321

PAUL M. KURTZ, University of Georgia School of Law, Athens, GA 30602-6012

SUSAN KELLY NICHOLS, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC
27602-0629

LANE SHETTERLY, Dept. of Land Conservation & Development, 635 Capitol St. NE, Suite
150, Salem, OR 97301

SUZANNE BROWN WALSH, 29 S Main St., West Hartford, CT 06107

STEPHANIE J. WILLBANKS, Vermont Law School, P.O. Box 96, Chelsea St., South Royalton,
VT 05068

DAVID M. ENGLISH, University of Missouri-Columbia, School of Law, Missouri & Conley
Aves., Columbia, MO 65211, *National Conference Reporter*

EX OFFICIO

HOWARD J. SWIBEL, 120 S Riverside Plaza, Suite 1200, Chicago, IL 60606, *President*

TOM BOLT, 5600 Royal Dane Mall, St. Thomas, VI 00802-6410, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

LARRY CRADDOCK, 2601 N Lamar Blvd., Austin, TX 78705-4260, *ABA Advisor*

KAREN E. BOXX, 316 William H. Gates Hall, P.O. Box 353020, Seattle, WA 98195-3020,
ABA Section Advisor

ERICA F. WOOD, 740 15th St. NW, Washington, DC 20005, *ABA Section Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 211 E. Ontario St., Suite 1300, Chicago, IL 60611, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195
www.nccusl.org

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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) “Commenced” means the filing of a first pleading in a guardianship or protective
10 proceeding.

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

14 (4) “Emergency” means circumstances exist that will likely result in substantial harm to
15 the respondent’s health, safety, or welfare, and that the appointment of a guardian is necessary
16 because no other person has authority to or is willing to act on the respondent’s behalf.

17 (5) “Guardian” means a person appointed by the court to make decisions regarding the
18 person of an adult, including an appointment under [insert reference to enacting state’s
19 guardianship statute].

20 (6) “Guardianship order” means an order appointing a guardian.

21 (7) “Guardianship proceeding” means a proceeding in which an order for the
22 appointment of a guardian is sought or has been entered.

1 (8) "Home state" means the state in which the respondent was physically present for at
2 least six consecutive months immediately before the guardianship or protective proceeding
3 commenced. A period of temporary absence counts as part of the six-month period.

4 (9) "Incapacitated person" means an adult for whom a guardian has been appointed.

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

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

10 (12) "Protected person" means an adult for whom a conservator has been appointed or
11 another protective order has been made.

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

14 (14) "Protective proceeding" means a judicial proceeding in which a protective order is
15 sought or has been entered.

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

18 (16) "Respondent" means an adult for whom the appointment of a guardian or
19 conservator or another protective order is sought.

20 (17) "Significant connection state" means a state other than the home state with which a
21 respondent has a significant connection other than mere physical presence and in which
22 substantial evidence concerning the respondent is available, which may include:

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

3 (B) the length of time the respondent has been or was formerly physically present
4 in the state and the duration of any absences;

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

6 (D) the extent to which the respondent has other ties to the state such as voting
7 registration, filing of tax returns, driver registration, social relationships, and receipt of services.

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

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

12 (a) A court of this state shall treat a foreign country as if it were a state of the United
13 States for the purpose of applying [articles] 1, 2, and 3.

14 (b) Except to the extent such order violates fundamental principles of human rights, a
15 guardianship or protective order of a foreign country under factual circumstances in substantial
16 conformity with the jurisdictional standards of this [Act] may be registered and enforced under
17 [Article] 4 .

18 **SECTION 104. COMMUNICATION BETWEEN COURTS.**

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

22 (b) Except as otherwise provided in subsection (c), a record must be made of a

1 communication under this section. The parties must be informed promptly of the communication
2 and granted access to the record.

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

5 **SECTION 105. COOPERATION BETWEEN COURTS.**

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

8 (1) hold an evidentiary hearing;

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

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

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

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

19 (6) issue an order authorizing the release of medical, financial, criminal or other
20 relevant information in that state, including protected health information as described in 42
21 U.S.C. §1320d [, as amended].

22 (b) Upon request for assistance of the kind provided in subsection (a) from a court of

1 another state in which a guardianship or protective proceeding is pending, a court of this state has
2 jurisdiction for the limited purpose of granting the relief requested or otherwise making
3 reasonable efforts to comply with the request.

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

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

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

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

1 [ARTICLE] 2

2 JURISDICTION

3 SECTION 201. EXCLUSIVE BASIS. This [article] provides the exclusive
4 jurisdictional basis for a court of this state to appoint a guardian or enter a protective order for an
5 adult.

6 SECTION 202. INITIAL JURISDICTION. In addition to the limited or special
7 jurisdiction specified in Section 203, a court of this state has jurisdiction to appoint a guardian or
8 enter a protective order for a respondent if:

9 (1) this state is the respondent's home state on the date the proceeding
10 commenced, or was the home state of the respondent within six months before commencement
11 of the proceeding;

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

13 (A) the respondent does not have a home state, or a court of the home
14 state has declined to exercise jurisdiction under Section 205 on the basis that this state is the
15 more appropriate forum; or

16 (B) no proceeding has been commenced in the respondent's home state or
17 another significant connection state, no objection to the jurisdiction of the court in this state has
18 been filed, and the court in this state concludes that it is an appropriate forum; or

19 (3) this state is neither the home state nor a significant connection state but the
20 home state and all significant connection states have declined to exercise jurisdiction under
21 Section 205 on the basis that this state is the more appropriate forum, or the respondent has no
22 home state or significant connection state.

1 **SECTION 203. SPECIAL CASES.**

2 (a) A court lacking jurisdiction under Section 202 has jurisdiction to:

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

5 (2) enter a protective order with respect to real or tangible personal property
6 located in the state; and

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

10 (b) If a petition for the appointment of a guardian in an emergency is brought in a state
11 other than the respondent's home state, the court in which the proceeding is brought shall dismiss
12 the proceeding at the direction of the court in the respondent's home state, whether dismissal is
13 requested prior to or after the emergency appointment.

14 **SECTION 204. EXCLUSIVE CONTINUING JURISDICTION.** Except as provided
15 in Sections 203, a court that has appointed a guardian or entered a protective order consistent
16 with this [act] has exclusive, continuing jurisdiction over the proceeding until it is terminated by
17 the court or the appointment or order expires by its own terms.

18 **SECTION 205. DECLINING JURISDICTION IF ANOTHER COURT MORE**
19 **APPROPRIATE FORUM.**

20 (a) A court having jurisdiction under Section 202 to appoint a guardian or enter a
21 protective order may decline to exercise its jurisdiction if at any time it determines that a court of
22 another state is a more appropriate forum.

1 (b) If a court of this state declines jurisdiction over a guardianship or protective
2 proceeding under subsection (a), it shall either dismiss the proceeding or stay the proceeding.
3 The court may impose any other condition the court considers just and proper, including the
4 condition that a guardianship or protective proceeding be promptly commenced in another state.

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

7 (1) any expressed preference of the respondent;

8 (2) whether abuse, neglect, or exploitation of the respondent has occurred or is
9 likely to occur in the future and which state could best protect the respondent from the abuse,
10 neglect, or exploitation;

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

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

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

15 (6) the nature and location of the evidence, including testimony of the
16 respondent;

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

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

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

1 **SECTION 206. JURISDICTION DECLINED BY REASON OF CONDUCT.**

2 (a) If at any time a court of this state determines that it acquired jurisdiction to appoint a
3 guardian or enter a protective order because a party seeking to invoke its jurisdiction engaged in
4 unjustifiable conduct, it may:

5 (1) decline to exercise jurisdiction;

6 (2) exercise jurisdiction for the limited purpose of fashioning an appropriate
7 remedy to ensure the safety of the respondent or the respondent's property or prevent a repetition
8 of the unjustifiable conduct, including staying the proceeding until a guardianship or protective
9 proceeding is commenced in a court of another state having jurisdiction; or

10 (3) continue to exercise jurisdiction after considering:

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

13 (B) whether it is a more appropriate forum than the court of any other
14 state under Section 205; and

15 (C) whether the court of any other state would have jurisdiction in
16 substantial conformity with Section 202.

17 (b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or
18 enter a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable
19 conduct, it may assess against that party necessary and reasonable expenses including costs,
20 communication expenses, attorney's fees, investigative fees, expenses for witnesses, and travel
21 expenses during the course of the proceedings. The court may not assess fees, costs, or expenses
22 against this state or a governmental subdivision, agency, or instrumentality of this state unless

1 authorized by law other than this [act].

2 **SECTION 207. NOTICE OF PROCEEDING.** If a petition for the appointment of a
3 guardian or entry of a protective order is brought in this state and this state is not the
4 respondent's home state, in addition to complying with the notice requirements of this state,
5 notice of the proceeding must be given in the same manner as given in this state to those persons
6 who would be entitled to notice of the petition were the proceeding brought in the respondent's
7 home state.

8 **SECTION 208. MULTIPLE PROCEEDINGS.** Except for a petition for the
9 appointment of a guardian in an emergency or a protective order limited to property located in
10 this state as provided in Section 203, if a petition to appoint a guardian or enter a protective order
11 is commenced in this and another state and neither petition has been dismissed or withdrawn, the
12 following applies:

13 (1) if the court in this state has jurisdiction under Section 202, it may proceed with the
14 case unless a court in another state acquires jurisdiction under Section 202 prior to the
15 appointment or entry of the order;

16 (2) if the court in this state does not have jurisdiction under Section 202, whether at the
17 time the petition is filed or at any time prior to the appointment or entry of the order, the court
18 shall stay the proceeding and communicate with the court in the other state, and shall dismiss the
19 proceeding if the court in the other state does not determine that the court in this state is a more
20 appropriate forum.

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 who would be entitled to notice of a petition in the this state
9 for the appointment of a guardian or conservator.

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

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

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

16 (2) no objection to the transfer has been made, or if an objection has been made,
17 the objector has not established that the transfer would be contrary to the interests of the
18 incapacitated person;

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

21 (4) the court is satisfied that the guardianship will be accepted by the court to
22 which the guardian has indicated the proceeding will be transferred.

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

3 (1) the protected person is physically located in or is reasonably expected to move
4 permanently to the other state, or the protected person has a significant connection to the other
5 state as provided in Section 103(17);

6 (2) no objection to the transfer has been made, or if an objection has been made,
7 the objector has not established that the transfer would be contrary to the interests of the
8 protected person;

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

11 (4) the court is satisfied that the conservatorship will be accepted by the court to
12 which the conservator has indicated the proceeding will be transferred.

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

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

19 (b) Notice of a petition under subsection (a) to accept a guardianship or conservatorship
20 from another state must be given to those persons who would be entitled to notice were the
21 petition a petition for the appointment of a guardian or entry of a protective order in both the
22 transferring state and in this state.

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

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

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

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

16 **SECTION 303. FINAL ORDER IN TRANSFERRING STATE.** Upon receipt from
17 the court of the other state of the provisional order accepting the guardianship or conservatorship
18 and the filing of the documents required in this state to terminate a guardianship or
19 conservatorship, the court shall enter an order terminating the guardianship or conservatorship in
20 this state and confirming the transfer of the proceeding to the other state.

21 **SECTION 304. FINAL ORDER IN ACCEPTING STATE; COURT REVIEW.**

22 (a) Upon receipt of the order from the transferring state terminating the guardianship or

1 conservatorship and confirming the transfer of the proceeding to this state, the court shall enter a
2 final order appointing the guardian or conservator as guardian or conservator in this state.

3 (b) Within [90] days after entry of a final order accepting a guardianship or
4 conservatorship transferred from another state, the court shall determine whether the
5 guardianship or conservatorship must 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 of an intent to
6 register to the appointing court, 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 CONSERVATORSHIP ORDERS. If a
10 conservator has not been appointed in this state and a petition for a protective order is not
11 pending in this state, a conservator appointed in another state, after giving notice of an intent to
12 register to the appointing court, may register the protective proceeding in this state by filing as a
13 foreign judgment in a court of this state, in a [county] in which property belonging to the
14 protected 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 subject to any conditions otherwise imposed upon nonresident parties.

20 (b) A court of this state may grant any relief available under the law of this state to
21 enforce a registered order.

1 [ARTICLE] 5

2 MISCELLANEOUS PROVISIONS

3 SECTION 501. APPLICATION AND CONSTRUCTION. In applying and
4 construing this uniform act, consideration must be given to the need to promote uniformity of the
5 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. TRANSITIONAL PROVISION. A motion or other request for relief
13 made in a guardianship or protective proceeding or to enforce a guardianship or protective order
14 which was commenced before the effective date of this [act] is governed by the law in effect at
15 the time the motion or other request was made.

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

17 SECTION 505. REPEALS. The following acts and parts of acts are hereby repealed:

- 18 (1)
- 19 (2)
- 20 (3)