

By Senator Gruters

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1 A bill to be entitled
2 An act relating to guardianships and protective
3 proceedings; providing a directive to the Division of
4 Law Revision to create part IX of ch. 744, F.S.,
5 entitled "Florida Guardianship and Protective
6 Proceedings Jurisdiction Act"; creating s. 744.74,
7 F.S.; providing a short title; creating s. 744.75,
8 F.S.; providing purpose and construction; creating s.
9 744.76, F.S.; defining terms; creating s. 744.77,
10 F.S.; providing that a foreign country is to be
11 treated as a state; creating s. 744.78, F.S.;
12 authorizing a court of this state to communicate with
13 a court of another state for specified purposes;
14 creating s. 744.79, F.S.; authorizing a court of this
15 state to request a court of another state to conduct
16 certain activities; creating s. 744.80, F.S.;
17 providing that a witness located in another state may
18 be deposed or may testify by certain means; creating
19 s. 744.81, F.S.; providing factors for a court to
20 consider in determining a significant connection with
21 another state; creating s. 744.82, F.S.; providing
22 that a court has special jurisdiction to undertake
23 certain activities; creating s. 744.83, F.S.;
24 providing when a court has exclusive and continuing
25 jurisdiction over the proceeding; creating ss. 744.84
26 and 744.85, F.S.; providing when a court may decline
27 jurisdiction; creating s. 744.86, F.S.; requiring
28 notice to specified parties; creating s. 744.87, F.S.;
29 providing rules for when a petition for the

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30 appointment of a guardian is filed in this state and
31 in another state; creating s. 744.88, F.S.; providing
32 for the transfer of a guardianship to another state;
33 creating s. 744.89, F.S.; providing procedures for
34 accepting transfer of a guardianship into this state;
35 creating s. 744.90, F.S.; providing for the uniform
36 application and construction of the part; creating s.
37 744.91, F.S.; providing that the part modifies,
38 limits, and supersedes certain federal laws; creating
39 s. 744.92, F.S.; providing applicability; providing an
40 effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. The Division of Law Revision is directed to
45 create part IX of chapter 744, Florida Statutes, consisting of
46 ss. 744.74-744.92, Florida Statutes, to be entitled "Florida
47 Guardianship and Protective Proceedings Jurisdiction Act."

48 Section 2. Section 744.74, Florida Statutes, is created to
49 read:

50 744.74 Short title.—This act may be cited as the "Florida
51 Guardianship and Protective Proceedings Jurisdiction Act."

52 Section 3. Section 744.75, Florida Statutes, is created to
53 read:

54 744.75 Purpose; construction.—The purpose of this part is
55 to provide clear direction to the courts, attorneys, guardians,
56 and individuals about the proper jurisdiction for guardianship
57 proceedings. This part is intended to supplement but not replace
58 the current system for determining incompetency, appointing

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59 guardians, managing estates, and other procedures as governed by
60 this chapter. The general purposes of this part are to:

61 (1) Avoid jurisdictional competition and conflict with
62 courts of other states in matters of guardianship.

63 (2) Establish procedures for transferring guardianship from
64 one state to another state when the incapacitated adult moves.

65 (3) Avoid relitigating the guardianship decisions of other
66 states in this state.

67 (4) Discourage the use of the interstate system for
68 continuing controversies over guardianship.

69 (5) Provide a uniform national system for registration and
70 enforcement of out-of-state guardianship orders.

71 Section 4. Section 744.76, Florida Statutes, is created to
72 read:

73 744.76 Definitions.—As used in this part, the term:

74 (1) "Adult" means an individual who has attained 18 years
75 of age.

76 (2) "Emergency" means a circumstance that will likely
77 result in substantial harm to a respondent's health, safety, or
78 welfare, and for which the appointment of a guardian is
79 necessary because no other person has authority or is willing to
80 act on the respondent's behalf.

81 (3) "Guardian" means a person who has been appointed by the
82 court to act on behalf of a ward's person or property, or both.

83 (4) "Guardianship order" means an order appointing a
84 guardian.

85 (5) "Guardianship proceeding" means a judicial proceeding
86 in which an order for the appointment of a guardian is sought or
87 has been issued.

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88 (6) "Home state" means the state in which the respondent
89 was physically present, including any period of temporary
90 absence, for at least 6 consecutive months immediately before
91 the filing of a petition for a protective order or the
92 appointment of a guardian. If no such state exists, then the
93 home state is the state in which the respondent was physically
94 present, including any period of temporary absence, for at least
95 6 consecutive months ending within the 6 months immediately
96 before the filing of the petition.

97 (7) "Incapacitated person" means a person who has been
98 adjudicated by a court of competent jurisdiction to lack the
99 capacity to manage at least some of his or her property or to
100 meet at least some of his or her essential health and safety
101 requirements and for whom a guardian has been appointed.

102 (8) "Interested person" has the same meaning as in s.
103 731.201.

104 (9) "Party" means the respondent, the petitioner, the
105 guardian, the conservator, or any other person allowed by the
106 court to participate in a guardianship or a protective
107 proceeding.

108 (10) "Person," except when used in the terms "incapacitated
109 person" or "protected person," includes individuals, children,
110 firms, associations, joint adventures, partnerships, estates,
111 trusts, business trusts, syndicates, fiduciaries, corporations,
112 and all other groups or combinations as defined in s. 1.01.

113 (11) "Protected person" means an adult for whom a
114 protective order has been issued.

115 (12) "Protective order" means an order appointing a
116 guardian or other order related to protection or management of

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117 an adult's property, including, but not limited to, an
118 injunction for protection against exploitation of a vulnerable
119 adult issued under s. 825.1035.

120 (13) "Protective proceeding" means a judicial proceeding in
121 which a protective order is sought or has been issued.

122 (14) "Record" means information that is inscribed on a
123 tangible medium or that is stored in an electronic or other
124 medium and is retrievable in perceivable form.

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

127 (16) "Significant-connection state" means a state, other
128 than the home state, with which a respondent has a significant
129 connection other than mere physical presence and in which
130 substantial evidence concerning the respondent is available.

131 (17) "State" means a state of the United States, the
132 District of Columbia, Puerto Rico, the United States Virgin
133 Islands, a federally recognized Indian tribe, or any territory
134 or insular possession subject to the jurisdiction of the United
135 States.

136 (18) "Ward" means a person for whom a guardian or a
137 conservator has been appointed.

138 Section 5. Section 744.77, Florida Statutes, is created to
139 read:

140 744.77 International application of part.—A court of this
141 state shall treat a foreign country as if it were a state of the
142 United States for purposes of applying this part.

143 Section 6. Section 744.78, Florida Statutes, is created to
144 read:

145 744.78 Communication between courts.—

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146 (1) A court of this state may communicate with a court in
147 another state concerning a proceeding arising under this part.

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

151 Section 7. Section 744.79, Florida Statutes, is created to
152 read:

153 744.79 Cooperation between courts.-

154 (1) In a guardianship proceeding in this state, a court of
155 this state may request the appropriate court of another state to
156 do any of the following:

157 (a) Hold a hearing;

158 (b) Order that an evaluation or an assessment be made of
159 the respondent; or

160 (c) Order any appropriate investigation of a person
161 involved in a proceeding.

162 (2) If a court of another state, in which a guardianship
163 proceeding is pending, requests the kind of assistance described
164 in subsection (1), a court of this state has jurisdiction for
165 the limited purpose of granting the request or for making
166 reasonable efforts to comply with the request.

167 Section 8. Section 744.80, Florida Statutes, is created to
168 read:

169 744.80 Taking testimony in another state.-

170 (1) In a guardianship proceeding or protective proceeding,
171 upon agreement of all the parties, a court of this state may
172 permit a witness located in another state to be deposed or to
173 testify by telephone, audiovisual, or other electronic means.

174 (2) Documentary evidence transmitted from another state to

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175 a court of this state by technological means that does not
176 produce an original writing may be excluded from evidence on an
177 objection based on the best evidence rule.

178 Section 9. Section 744.81, Florida Statutes, is created to
179 read:

180 744.81 Significant connection factors.—In determining
181 whether a respondent has a significant connection with a
182 particular state, the court shall consider the following:

183 (1) The location of the respondent's family and other
184 persons required to be notified of the guardianship proceeding
185 or the protective proceeding.

186 (2) The length of time that the respondent was physically
187 present in the state at any point in time and the duration of
188 any absence.

189 (3) The location of the respondent's property.

190 (4) The extent to which the respondent has ties to the
191 state, such as voting registration, state or local tax return
192 filing, vehicle registration, driver license, social
193 relationships, and receipt of services.

194 Section 10. Section 744.82, Florida Statutes, is created to
195 read:

196 744.82 Special jurisdiction.—

197 (1) A court of this state has jurisdiction to do the
198 following:

199 (a) Appoint a temporary guardian in an emergency for the
200 person who is physically present in this state in accordance
201 with this chapter.

202 (b) Appoint a guardian for an incapacitated person for whom
203 a provisional order to transfer the proceeding from another

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204 state has been issued.

205 (2) If a petition for the appointment of an emergency
206 temporary guardian is brought in this state and this state was
207 not the respondent's home state on the date that the petition
208 was filed, the court shall dismiss the proceeding at the request
209 of the court of the home state, if any, whether dismissal is
210 requested before or after the emergency appointment.

211 Section 11. Section 744.83, Florida Statutes, is created to
212 read:

213 744.83 Exclusive and continuing jurisdiction.—Except as
214 otherwise provided in s. 744.82, a court that has appointed a
215 guardian or issued a protective order consistent with this part
216 has exclusive and continuing jurisdiction over the proceeding
217 until it is terminated by the court or the appointment or order
218 expires by its own terms.

219 Section 12. Section 744.84, Florida Statutes, is created to
220 read:

221 744.84 Appropriate forum.—

222 (1) A court of this state having jurisdiction to appoint a
223 guardian may decline to exercise its jurisdiction if it
224 determines at any time that a court of another state is a more
225 appropriate forum.

226 (2) If a court of this state declines to exercise its
227 jurisdiction under subsection (1), it shall dismiss or stay the
228 proceeding. The court may impose any condition that the court
229 considers just and proper, including requiring that a petition
230 for the appointment of a guardian or issuance of a protective
231 order be filed promptly in another state.

232 Section 13. Section 744.85, Florida Statutes, is created to

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233 read:

234 744.85 Jurisdiction declined by reason of conduct.-

235 (1) If at any time a court of this state determines that it
236 acquired jurisdiction to appoint a guardian because a person
237 seeking to invoke its jurisdiction engaged in unjustifiable
238 conduct, the court may:

239 (a) Decline to exercise jurisdiction; or

240 (b) Exercise jurisdiction for the limited purposes of
241 fashioning an appropriate remedy to ensure the health, safety,
242 and welfare of the respondent, of protecting the respondent's
243 property, or of preventing a repetition of the unjustifiable
244 conduct, including staying the proceeding until a petition for
245 the appointment of a guardian is filed in a court of another
246 state having jurisdiction.

247 (2) If a court of this state determines that it acquired
248 jurisdiction to appoint a guardian because a person seeking to
249 invoke its jurisdiction engaged in unjustifiable conduct, it may
250 assess that person necessary and reasonable expenses, including
251 attorney fees, investigative fees, court costs, communication
252 expenses, witness fees and expenses, and travel expenses. The
253 court may not assess fees, costs, or expenses of any kind
254 against this state or a governmental subdivision, agency, or
255 instrumentality of this state unless authorized by law other
256 than this part.

257 Section 14. Section 744.86, Florida Statutes, is created to
258 read:

259 744.86 Notice of proceeding.-If a petition for the
260 appointment of a guardian is brought in this state and this
261 state was not the respondent's home state on the date that the

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262 petition was filed, notice of the petition must be given to
263 those persons who would be entitled to notice of the petition in
264 this state.

265 Section 15. Section 744.87, Florida Statutes, is created to
266 read:

267 744.87 Proceedings in more than one state.—Except for a
268 petition for the appointment of a guardian in an emergency, if a
269 petition for the appointment of a guardian is filed in this
270 state and in another state and neither petition has been
271 dismissed or withdrawn, the following rules apply:

272 (1) If the court of this state has jurisdiction under this
273 chapter, it may proceed with the case unless a court of another
274 state acquires jurisdiction before the appointment of the
275 guardian or issuance of the order.

276 (2) If the court of this state does not have jurisdiction
277 under this chapter, whether at the time the petition is filed or
278 at any time before the appointment of a guardian or issuance of
279 an order, the court shall stay the proceeding and communicate
280 with the court of the other state. If the court of the other
281 state has jurisdiction, the court of this state shall dismiss
282 the petition unless the court of the other state determines that
283 the court of this state is a more appropriate forum.

284 Section 16. Section 744.88, Florida Statutes, is created to
285 read:

286 744.88 Transfer of guardianship to another state.—

287 (1) A guardian appointed in this state, or any other
288 interested person, may petition the court to transfer the
289 guardianship to another state.

290 (2) Notice of a petition under subsection (1) must be given

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291 to all parties who would be entitled to notice of a petition in
292 this state for the appointment of a guardian or a petition for a
293 change of residence of the ward.

294 (3) On the court's own motion or upon request of the
295 guardian, the incapacitated or the protected person, or other
296 person required to be notified of the petition, the court shall
297 hold a hearing on a petition filed under subsection (1).

298 (4) The court may issue an order provisionally granting a
299 petition to transfer a guardianship and shall direct the
300 guardian to petition for guardianship in the other state if the
301 court is satisfied that the guardianship will likely be accepted
302 by the court of the other state and the court finds that:

303 (a) The incapacitated person is physically present in or is
304 reasonably expected to move permanently to the other state.

305 (b) An objection to the transfer has not been made or, if
306 an objection has been made, the objector has not established
307 that the transfer would be contrary to the interests of the
308 incapacitated person.

309 (c) Plans for care and services for the incapacitated
310 person in the other state are reasonable and sufficient.

311 (5) The court shall issue a final order confirming the
312 transfer and terminating the guardianship upon its receipt of:

313 (a) A provisional order accepting the proceeding from the
314 court to which the proceeding is to be transferred which is
315 issued under provisions similar to s. 744.89.

316 (b) The documents required, including any required
317 accountings, to terminate a guardianship in this state.

318 (6) The guardian of the ward in this state shall file a
319 petition for discharge within 60 days after receipt of an order

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320 confirming the transfer of the guardianship to another
321 jurisdiction in compliance with part VII of this chapter.

322 Section 17. Section 744.89, Florida Statutes, is created to
323 read:

324 744.89 Accepting guardianship transferred from another
325 state.-

326 (1) Within 60 days after the residence of a ward of a
327 foreign guardian is moved to this state, the foreign guardian
328 appointed in another state must file a petition to determine
329 incapacity and a petition to appoint a guardian with the clerk
330 of court in the county in which the ward resides. The petitions
331 must include a certified copy of the other state's provisional
332 order of transfer in addition to a certified copy of the
333 guardian's letters of guardianship or the equivalent.

334 (2) Notice of the petitions under subsection (1) must be
335 given to those persons who would be entitled to notice in this
336 state in the same manner as notice is required to be given in
337 this state.

338 (3) The court shall hold a hearing on the petitions filed
339 pursuant to the procedures set forth in this chapter.

340 (4) The court shall issue orders on the petitions unless:

341 (a) An objection is made and the objector establishes that
342 transfer of the proceeding would be contrary to the best
343 interests of the ward; or

344 (b) The guardian is ineligible for appointment in this
345 state.

346 (5) Until such time as a guardian is appointed in this
347 state for the ward or the ward is determined to not require a
348 guardian in this state, the foreign guardian's authority is

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349 recognized and given full faith and credit in the courts of this
350 state, provided that the guardian is qualified to serve as the
351 guardian of the ward in this state. A foreign guardian who fails
352 to comply with the requirements of this section has no authority
353 to act on behalf of the ward in this state.

354 (6) After appointment of a guardian in this state, the
355 court may issue such orders as are necessary to complete the
356 transfer of the foreign guardianship to this state or the
357 termination of the foreign guardianship, as may be required.

358 (7) The authority of the guardian of a nonresident ward
359 shall be recognized and given full faith and credit in the
360 courts of this state. A guardian appointed in another state or
361 country may maintain or defend any action in this state as a
362 representative of the ward unless a guardian has been appointed
363 in this state.

364 Section 18. Section 744.90, Florida Statutes, is created to
365 read:

366 744.90 Uniformity of application and construction.—In
367 applying and construing this part, consideration must be given
368 to the need to promote uniformity of the law with respect to its
369 subject matter among states that enact it.

370 Section 19. Section 744.91, Florida Statutes, is created to
371 read:

372 744.91 Relation to Electronic Signatures in Global and
373 National Commerce Act.—This part modifies, limits, and
374 supersedes the federal Electronic Signatures in Global and
375 National Commerce Act, 15 U.S.C. ss. 7001, et seq., but does not
376 modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s.
377 7001(c), or authorize electronic delivery of any of the notices

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378 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

379 Section 20. Section 744.92, Florida Statutes, is created to
380 read:

381 744.92 Application.—This part applies to guardianship and
382 protective proceedings that are filed on or after July 1, 2019.

383 Section 21. This act shall take effect July 1, 2019.