

1                   A bill to be entitled  
2           An act relating to adult guardianship; redesignating part  
3           II of ch. 744, F.S., as "Venue and Jurisdiction"; creating  
4           ss. 744.211, 744.2112, 744.2113, 744.2114, 744.2115,  
5           744.2123, 744.2126, 744.2127, and 744.2129, F.S.;  
6           providing purposes for and construction of jurisdictional  
7           provisions; providing definitions; providing for treatment  
8           of foreign countries for specified purposes; providing for  
9           communication and cooperation between courts; providing  
10          for jurisdiction; providing for determination of whether a  
11          court is an appropriate forum; authorizing a court to  
12          decline jurisdiction due to certain conduct; providing for  
13          assessment of costs and expenses against certain parties  
14          engaging in unjustifiable conduct that caused the court to  
15          acquire jurisdiction; providing for proceedings in more  
16          than one state; providing for applicability of specified  
17          provisions; amending s. 744.202, F.S.; requiring a court  
18          to determine whether it has jurisdiction; amending s.  
19          744.3201, F.S.; requiring that a petition to determine  
20          incapacity of a person be executed by an adult; requiring  
21          that factual information included in a petition alleging  
22          incapacity not include any information that is  
23          confidential or for which the alleged incapacitated person  
24          maintains a right to privacy; requires that additional  
25          information be provided in such petitions; providing for a  
26          court to request additional information; providing a  
27          continuing duty of interested persons to inform the court  
28          of certain information; providing an effective date.

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

Section 1. The Division of Statutory Revision is directed to redesignate part II of chapter 744, Florida Statutes, as "Venue and Jurisdiction."

Section 2. Sections 744.211, 744.2112, 744.2113, 744.2114, 744.2115, 744.2123, 744.2126, 744.2127, and 744.2129, Florida Statutes, are created to read:

744.211 Purposes; construction.—The general purposes of ss. 744.211–744.2129 are to:

(1) Avoid jurisdictional competition and conflict with courts of other states in matters of guardianship that have in the past resulted in the relocation of alleged incapacitated persons from state to state with harmful effects on their well-being.

(2) Promote cooperation with the courts of other states so that guardianship proceedings are heard by the state that can best decide if a person is incapacitated and in need of the appointment of a guardian.

(3) Deter relocations of alleged incapacitated persons to avoid this state from determining if a person is incapacitated and needs a guardian.

(4) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same alleged incapacitated person.

56 744.2112 Definitions.—As used in ss. 744.211-744.2129, the  
 57 term:

58 (1) "Home state" means the state in which the alleged  
 59 incapacitated person was domiciled or resided for at least 6  
 60 consecutive months immediately prior to the filing of a petition  
 61 to determine incapacity or petition to appoint a guardian for an  
 62 incapacitated person.

63 (2) "Proceeding" means the initiation of a case by the  
 64 filing of a petition to determine incapacity or a petition to  
 65 appoint a guardian for an incapacitated person.

66 (3) "State" means a state of the United States, the  
 67 District of Columbia, Puerto Rico, the United States Virgin  
 68 Islands, a federally recognized Indian tribe, or any territory  
 69 or insular possession subject to the jurisdiction of the United  
 70 States.

71 744.2113 International application.—A court of this state  
 72 may treat a foreign country as if it were a state for the  
 73 purpose of applying ss. 744.211-744.2129.

74 744.2114 Communication between courts.—A court of this  
 75 state may communicate with a court in another state concerning a  
 76 proceeding arising under ss. 744.211-744.2129. The court shall  
 77 allow interested persons to participate in the communication.

78 744.2115 Cooperation between courts.—

79 (1) In a proceeding in this state, a court of this state  
 80 may request the appropriate court of another state to do any of  
 81 the following:

82 (a) Hold an evidentiary hearing.

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83 (b) Order a person in that state to produce evidence or  
84 give testimony pursuant to procedures of that state.

85 (c) Order that an evaluation or assessment be made of the  
86 alleged incapacitated person.

87 (d) Order any appropriate investigation of an interested  
88 person involved in a proceeding.

89 (e) Forward to the court of this state a certified copy of  
90 the transcript or other record of a hearing under paragraph (a)  
91 or any other proceeding, any evidence otherwise produced under  
92 paragraph (b), and any evaluation or assessment prepared  
93 compliance with an order under paragraph (c) or paragraph (d).

94 (f) Issue any order necessary to ensure the appearance in  
95 the proceeding of an interested person whose presence is  
96 necessary for the court to make a determination.

97 (2) If a court of another state in which a proceeding is  
98 pending requests assistance as provided in subsection (1), a  
99 court of this state has jurisdiction for the purpose of granting  
100 the request or making reasonable efforts to comply with the  
101 request.

102 744.2123 Jurisdiction.—A court of this state has  
103 jurisdiction to determine incapacity or appoint a guardian for  
104 an alleged incapacitated person if:

105 (1) This state is the alleged incapacitated person's home  
106 state;

107 (2) On the date the petition is filed, this state is  
108 determined to be an appropriate forum and:

109 1. The alleged incapacitated person does not have a home  
110 state or a court of the alleged incapacitated person's home

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111 state has declined to exercise jurisdiction because this state  
112 is a more appropriate forum; or

113 2. The alleged incapacitated person has a home state, a  
114 petition for determination of incapacity or for appointment of a  
115 guardian for an incapacitated person is not pending in a court  
116 of the home state, an objection to the court's jurisdiction is  
117 not filed by an interested person required to be notified of the  
118 proceeding, and the court in this state concludes that it is an  
119 appropriate forum under s. 744.2126; or

120 (3) This state has jurisdiction under subsection (1) or  
121 subsection (2), the alleged incapacitated person's home state  
122 has declined jurisdiction because this state is the more  
123 appropriate forum, and jurisdiction in this state is consistent  
124 with the State Constitution and the Constitution and laws of the  
125 United States.

126 744.2126 Appropriate forum.—

127 (1) A court of this state having venue and jurisdiction in  
128 a proceeding may decline to exercise its jurisdiction if it  
129 determines at any time that a court of another state is a more  
130 appropriate forum.

131 (2) If a court of this state declines to exercise its  
132 jurisdiction under subsection (1), it shall stay the proceeding.  
133 The court shall require that a proceeding be filed in another  
134 state within 30 days after entering the stay. If a proceeding is  
135 not filed in another state within 30 days, a court of this state  
136 shall remove the stay and assume jurisdiction of the proceeding.

137 (3) In determining whether it is an appropriate forum, the  
 138 court shall consider all relevant factors, including, but not  
 139 limited to, the following:

140 (a) Any expressed preference of the alleged incapacitated  
 141 person.

142 (b) Whether abuse, neglect, or exploitation of the alleged  
 143 incapacitated person has occurred or is likely to occur and  
 144 which state could best protect the alleged incapacitated person  
 145 from the abuse, neglect, or exploitation.

146 (c) The length of time the alleged incapacitated person  
 147 was physically present in or was a legal resident of this or  
 148 another state.

149 (d) The state in which the alleged incapacitated person  
 150 has established a domicile or intended to establish a domicile.

151 (e) The distance of the alleged incapacitated person from  
 152 the court in each state.

153 (f) The financial circumstances of the alleged  
 154 incapacitated person's estate.

155 (g) The nature and location of the evidence.

156 744.2127 Jurisdiction declined because of conduct.—

157 (1) If at any time a court of this state determines that  
 158 it acquired jurisdiction in a proceeding because of  
 159 unjustifiable conduct, the court may:

160 (a) Decline to exercise jurisdiction;

161 (b) Exercise jurisdiction for the limited purpose of  
 162 fashioning an appropriate remedy to ensure the health, safety,  
 163 and welfare of the alleged incapacitated person or the  
 164 protection of the alleged incapacitated person's property or

165 prevent a repetition of the unjustifiable conduct, including  
 166 staying the proceeding until a proceeding is filed in a court of  
 167 another state having jurisdiction; or

168 (c) Continue to exercise jurisdiction after considering:

169 1. The extent to which the alleged incapacitated person  
 170 and all interested persons have acquiesced in the exercise of  
 171 the court's jurisdiction;

172 2. Whether a court of this state is a more appropriate  
 173 forum than the court of any other state pursuant to the factors  
 174 set forth in s. 744.2126(3); and

175 3. Whether the court of any other state would have  
 176 jurisdiction under factual circumstances in substantial  
 177 conformity with the jurisdictional standards of s. 744.2123.

178 (2) If a court of this state determines that it acquired  
 179 jurisdiction in a proceeding because an interested person  
 180 seeking to invoke its jurisdiction engaged in unjustifiable  
 181 conduct, it may assess against that party necessary and  
 182 reasonable expenses, including attorney's fees, investigative  
 183 fees, court costs, communication expenses, witness fees and  
 184 expenses, and travel expenses. The court may not assess fees,  
 185 costs, or expenses of any kind against this state or a  
 186 governmental subdivision, agency, or instrumentality of this  
 187 state unless authorized by law other than this part.

188 744.2129 Proceedings in more than one state.—Except for a  
 189 petition for the appointment of an emergency temporary guardian  
 190 under s. 744.3031, if a proceeding is filed in this state and in  
 191 another state and neither proceeding is dismissed or withdrawn,  
 192 the court shall determine which state has priority. A court of

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193 this state shall enter any order necessary pursuant to s.  
 194 744.3031 to protect the alleged incapacitated person pending  
 195 final determination of the state to assume jurisdiction of the  
 196 proceeding.

197 Section 3. Sections 744.211, 744.2112, 744.2113, 744.2114,  
 198 744.2115, 744.2123, 744.2126, 744.2127, and 744.2129, Florida  
 199 Statutes, as created by this act, apply to proceedings begun on  
 200 or after October 1, 2010.

201 Section 4. Subsection (5) is added to section 744.202,  
 202 Florida Statutes, to read:

203 744.202 Venue; jurisdiction determination.-

204 (5) A court shall also determine if it has jurisdiction  
 205 pursuant to this part.

206 Section 5. Section 744.3201, Florida Statutes, is amended  
 207 to read:

208 744.3201 Petition to determine incapacity.-

209 (1) A petition to determine incapacity of a person must  
 210 ~~may~~ be executed by an adult ~~person~~.

211 (2) The petition must be verified and must:

212 (a) State the name, age, and present address of the  
 213 petitioner and his or her relationship to the alleged  
 214 incapacitated person.†

215 (b) State the name, age, county of residence, and present  
 216 address of the alleged incapacitated person.†

217 (c) Specify the primary language spoken by the alleged  
 218 incapacitated person, if known.†

219 (d) Allege that the petitioner believes the alleged  
 220 incapacitated person to be incapacitated and specify the factual



221 information on which such belief is based without stating any  
 222 confidential information or information for which the alleged  
 223 incapacitated person maintains a right to privacy and the names  
 224 and addresses of all persons known to the petitioner who have  
 225 knowledge of such facts through personal observations.~~;~~

226 (e) State the name and address of the alleged  
 227 incapacitated person's attending or family physician, if known.~~;~~

228 (f) State which rights enumerated in s. 744.3215 the  
 229 alleged incapacitated person is incapable of exercising, to the  
 230 best of petitioner's knowledge. If the petitioner has  
 231 insufficient experience to make such judgments, the petition  
 232 must so state.~~;~~~~and~~

233 (g) State the names, relationships, and addresses of the  
 234 next of kin of the alleged incapacitated person, so far as are  
 235 known, specifying the dates of birth of any who are minors.

236 (h) State all addresses at which the alleged incapacitated  
 237 person has lived for the 6 months prior to the filing of the  
 238 petition.

239 (i) State whether the petitioner has participated, as a  
 240 party or witness or in any other capacity, in any other  
 241 proceeding concerning the alleged incapacitated person being  
 242 declared incapacitated or seeking the appointment of a guardian  
 243 and, if so, identify the court, the case number, and the date of  
 244 any determination.

245 (j) State whether there is any other pending proceeding to  
 246 determine the capacity of the alleged incapacitated person or  
 247 seeking the appointment of a guardian for an alleged  
 248 incapacitated person that could affect the current proceeding,

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249 and, if so, identify the court, the case number, and the nature  
250 of the proceeding.

251 (3) A copy of any petition for appointment of guardian or  
252 emergency temporary guardian, if applicable, shall be filed with  
253 the petition to determine incapacity.

254 (4) If the information as to any of the items described in  
255 paragraph (2)(i) or paragraph (2)(j) is in the affirmative, the  
256 petitioner shall give additional information concerning those  
257 items under oath as required by the court. The court may examine  
258 the petitioner and interested persons under oath as to details  
259 of the information furnished and other matters pertinent to the  
260 court's jurisdiction and the disposition of the case.

261 (5) Each interested person has a continuing duty to inform  
262 the court of any proceeding for the determination of capacity of  
263 the alleged incapacitated person or seeking the appointment of a  
264 guardian for an alleged incapacitated person in this or any  
265 other state that could affect the current proceeding.

266 Section 6. This act shall take effect October 1, 2010.