

By Senator Storms

10-01713-10

20102488

1 A bill to be entitled
2 An act relating to guardianship and protective
3 proceedings; creating the Uniform Adult Guardianship
4 and Protective Proceedings Jurisdiction Act; defining
5 terms; providing that, for the purpose of applying the
6 act, a court of this state may treat a foreign country
7 as if it were a state; providing that a court of this
8 state may communicate with a court of another state
9 concerning a guardianship or protective proceeding
10 arising under the act; authorizing a court of this
11 state to request a court of another state to conduct
12 certain specified activities; providing that testimony
13 of a witness who is located in another state may be
14 offered by deposition or other means in this state;
15 designating the factors that a court must consider
16 when determining whether a person has a significant
17 connection with a particular state; providing that the
18 act provides the exclusive jurisdictional basis for a
19 court of this state to appoint a guardian or issue a
20 protective order for an adult; setting forth the
21 criteria to determine whether a court of this state
22 has jurisdiction to appoint a guardian or issue a
23 protective order; providing that a court of this state
24 has special jurisdiction to undertake certain
25 specified activities when the court lacks general
26 jurisdiction over the guardianship or protective
27 proceeding; providing that if a court of this state
28 has appointed a guardian or issued a protective order
29 consistent with the act, it has exclusive and

10-01713-10

20102488

30 continuing jurisdiction over the proceeding until it
31 is terminated by the court or the appointment or order
32 expires by its own terms; providing that a court of
33 this state having jurisdiction to appoint a guardian
34 or issue a protective order may decline to exercise
35 its jurisdiction if it determines at any time that a
36 court of another state is a more appropriate forum;
37 setting forth the criteria that the court must
38 consider when determining whether it is the
39 appropriate forum to appoint a guardian or issue a
40 protective order; providing that a court may decline
41 jurisdiction due to the unjustifiable behavior of a
42 party; providing for notice to all parties; providing
43 for procedures to follow if a petition to appoint a
44 guardian or issue a protective order has been filed in
45 more than one state; providing for the transfer of a
46 guardianship or conservatorship to another state;
47 providing procedures for accepting transfer of a
48 guardianship or conservatorship into this state;
49 providing procedures for registering the guardianship
50 or protective order in this state; providing for the
51 effect of registering the guardianship or protective
52 order; providing for the uniform application and
53 construction of the act; providing that the act
54 modifies, limits, and supersedes certain specified
55 federal laws; providing that the act applies to
56 guardianship and protective proceedings begun on or
57 after July 1, 2010; providing an effective date.

58

10-01713-10

20102488

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

60
61 Section 1. Short title.—This act may be cited as the
62 “Uniform Adult Guardianship and Protective Proceedings
63 Jurisdiction Act.”

64 Section 2. Definitions.—As used in this act, the term:

65 (1) “Adult” means an individual who has attained 18 years
66 of age.

67 (2) “Conservator” means a person who is appointed or
68 qualified by the court to act as general, limited, or temporary
69 guardian of an adult’s property or a person who is legally
70 authorized to perform substantially the same functions.

71 (3) “Emergency” means a circumstance that will likely
72 result in substantial harm to a respondent’s health, safety, or
73 welfare, and for which the appointment of a guardian is
74 necessary because no other person has authority and is willing
75 to act on the respondent’s behalf.

76 (4) “Guardian” means a person appointed by the court to
77 make decisions regarding the person of an adult, including a
78 person appointed under chapter 744, Florida Statutes.

79 (5) “Guardianship order” means an order appointing a
80 guardian.

81 (6) “Guardianship proceeding” means a judicial proceeding
82 in which an order for the appointment of a guardian is sought or
83 has been issued.

84 (7) “Home state” means the state in which the respondent
85 was physically present, including any period of temporary
86 absence, for at least 6 consecutive months immediately before
87 the filing of a petition for a protective order or the

10-01713-10

20102488

88 appointment of a guardian; or if none, the state in which the
89 respondent was physically present, including any period of
90 temporary absence, for at least 6 consecutive months ending
91 within the 6 months before the filing of the petition.

92 (8) "Incapacitated person" means an adult for whom a
93 guardian has been appointed.

94 (9) "Party" means the respondent, petitioner, guardian,
95 conservator, or any other person allowed by the court to
96 participate in a guardianship or protective proceeding.

97 (10) "Person" has the same meaning as in s. 1.01, Florida
98 Statutes.

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

101 (12) "Protective order" means an order appointing a
102 conservator or other order related to management of an adult's
103 property.

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

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

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

111 (16) "Significant-connection state" means a state, other
112 than the home state, with which a respondent has a significant
113 connection other than mere physical presence and in which
114 substantial evidence concerning the respondent is available.

115 (17) "State" means a state of the United States, the
116 District of Columbia, Puerto Rico, the United States Virgin

10-01713-10

20102488

117 Islands, a federally recognized Indian tribe, or any territory
118 or insular possession subject to the jurisdiction of the United
119 States.

120 Section 3. International application of the act.—A court of
121 this state may treat a foreign country as if it were a state for
122 the purpose of applying this act.

123 Section 4. Communication between courts.—

124 (1) A court of this state may communicate with a court of
125 another state concerning a proceeding arising under this act.
126 The court may allow the parties to participate in the
127 communication. Except as otherwise provided in subsection (2),
128 the court shall make a record of the communication. The record
129 may be limited to the fact that the communication occurred.

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

133 Section 5. Cooperation between courts.—

134 (1) In a guardianship or protective proceeding in this
135 state, a court of this state may request the appropriate court
136 of another state to do any of the following:

137 (a) Hold an evidentiary hearing;

138 (b) Order a person in that state to produce evidence or
139 give testimony pursuant to procedures of that state;

140 (c) Order that an evaluation or assessment be made of the
141 respondent;

142 (d) Order any appropriate investigation of a person
143 involved in a proceeding;

144 (e) Forward to the court of this state a certified copy of
145 the transcript or other record of a hearing under paragraph (a)

10-01713-10

20102488

146 or any other proceeding, any evidence otherwise produced under
147 paragraph (b), and any evaluation or assessment prepared in
148 compliance with an order under paragraph (c) or paragraph (d);

149 (f) Issue any order necessary to ensure the appearance in
150 the proceeding of a person whose presence is necessary for the
151 court to make a determination, including the respondent or the
152 incapacitated or protected person; or

153 (g) Issue an order authorizing the release of medical,
154 financial, criminal, or other relevant information in that
155 state, including protected health information as defined in 45
156 C.F.R. s. 164.504, as amended.

157 (2) If a court of another state in which a guardianship or
158 protective proceeding is pending requests assistance of the kind
159 provided in subsection (1), a court of this state has
160 jurisdiction for the limited purpose of granting the request or
161 making reasonable efforts to comply with the request.

162 Section 6. Taking testimony in another state.-

163 (1) In a guardianship or protective proceeding, in addition
164 to other procedures that may be available, testimony of a
165 witness who is located in another state may be offered by
166 deposition or other means allowable in this state for testimony
167 taken in another state. The court on its own motion may order
168 that the testimony of a witness be taken in another state and
169 may prescribe the manner in which and the terms upon which the
170 testimony is to be taken.

171 (2) In a guardianship or protective proceeding, a court of
172 this state may permit a witness located in another state to be
173 deposed or to testify by telephone or audiovisual or other
174 electronic means. A court of this state shall cooperate with the

10-01713-10

20102488

175 court of the other state in designating an appropriate location
176 for the deposition or testimony.

177 (3) Documentary evidence transmitted from another state to
178 a court of this state by technological means that do not produce
179 an original writing may not be excluded from evidence on an
180 objection based on the best evidence rule.

181 Section 7. Significant connection factors.—When determining
182 whether a respondent has a significant connection with a
183 particular state, the court shall consider:

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

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

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

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's license, social
193 relationship, and receipt of services.

194 Section 8. Exclusive basis.—This act provides the exclusive
195 jurisdictional basis for a court of this state to appoint a
196 guardian or issue a protective order for an adult.

197 Section 9. Jurisdiction.—A court of this state has
198 jurisdiction to appoint a guardian or issue a protective order
199 for a respondent if:

200 (1) This state is the respondent's home state; or

201 (2) On the date that the petition is filed, this state is a
202 significant-connection state and:

203 (a) The respondent does not have a home state or a court of

10-01713-10

20102488

204 the respondent's home state has declined to exercise
205 jurisdiction because this state is a more appropriate forum;

206 (b) The respondent has a home state, a petition for an
207 appointment or order is not pending in a court of that state or
208 another significant-connection state, and, before the court
209 makes the appointment or issues the order:

210 1. A petition for an appointment or order is not filed in
211 the respondent's home state;

212 2. An objection to the court's jurisdiction is not filed by
213 a person required to be notified of the proceeding; and

214 3. The court of this state concludes that it is an
215 appropriate forum under the factors set forth in section 9.

216 (c) This state does not have jurisdiction under subsection
217 (1) or subsection (2), the respondent's home state and all
218 significant-connection states have declined to exercise
219 jurisdiction because this state is the more appropriate forum,
220 and jurisdiction in this state is consistent with the
221 constitutions of this state and the United States; or

222 (d) The requirements for special jurisdiction under section
223 10 are met.

224 Section 10. Special jurisdiction.—

225 (1) A court of this state lacking jurisdiction under
226 section 9 has special jurisdiction to do any of the following:

227 (a) Appoint a guardian in an emergency for a term not
228 exceeding 90 days for a respondent who is physically present in
229 this state;

230 (b) Issue a protective order with respect to real or
231 tangible personal property located in this state; or

232 (c) Appoint a guardian or conservator for an incapacitated

10-01713-10

20102488

233 or protected person for whom a provisional order to transfer the
234 proceeding from another state has been issued under procedures
235 similar to section 16.

236 (2) If a petition for the appointment of a guardian in an
237 emergency is brought in this state and this state was not the
238 respondent's home state on the date that the petition was filed,
239 the court shall dismiss the proceeding at the request of the
240 court of the home state, if any, whether dismissal is requested
241 before or after the emergency appointment.

242 Section 11. Exclusive and continuing jurisdiction.—Except
243 as otherwise provided in section 10, a court that has appointed
244 a guardian or issued a protective order consistent with this act
245 has exclusive and continuing jurisdiction over the proceeding
246 until it is terminated by the court or the appointment or order
247 expires by its own terms.

248 Section 12. Appropriate forum.—

249 (1) A court of this state having jurisdiction under section
250 9 to appoint a guardian or issue a protective order may decline
251 to exercise its jurisdiction if it determines at any time that a
252 court of another state is a more appropriate forum.

253 (2) If a court of this state declines to exercise its
254 jurisdiction under subsection (1), it shall dismiss or stay the
255 proceeding. The court may impose any condition that the court
256 considers just and proper, including the condition that a
257 petition for the appointment of a guardian or issuance of a
258 protective order be filed promptly in another state.

259 (3) When determining whether it is an appropriate forum,
260 the court shall consider all relevant factors, including:

261 (a) Any expressed preference of the respondent;

10-01713-10

20102488

- 262 (b) Whether abuse, neglect, or exploitation of the
263 respondent has occurred or is likely to occur and which state
264 could best protect the respondent from the abuse, neglect, or
265 exploitation;
- 266 (c) The length of time that the respondent was physically
267 present in or was a legal resident of this or another state;
- 268 (d) The distance of the respondent from the court of each
269 state;
- 270 (e) The financial circumstances of the respondent's estate;
271 (f) The nature and location of the evidence;
- 272 (g) The ability of the court of each state to decide the
273 issue expeditiously and the procedures necessary to present
274 evidence;
- 275 (h) The familiarity of the court of each state with the
276 facts and issues in the proceeding; and
- 277 (i) If an appointment were made, the court's ability to
278 monitor the conduct of the guardian or conservator.
- 279 Section 13. Jurisdiction declined by reason of conduct.—
- 280 (1) If at any time a court of this state determines that it
281 acquired jurisdiction to appoint a guardian or issue a
282 protective order because of unjustifiable conduct, the court
283 may:
- 284 (a) Decline to exercise jurisdiction;
- 285 (b) Exercise jurisdiction for the limited purpose of
286 fashioning an appropriate remedy to ensure the health, safety,
287 and welfare of the respondent or the protection of the
288 respondent's property or to prevent a repetition of the
289 unjustifiable conduct, including staying the proceeding until a
290 petition for the appointment of a guardian or issuance of a

10-01713-10

20102488

291 protective order is filed in a court of another state having
292 jurisdiction; or

293 (c) Continue to exercise jurisdiction after considering:

294 1. The extent to which the respondent and all persons
295 required to be notified of the proceedings have acquiesced in
296 the exercise of the court's jurisdiction;

297 2. Whether it is a more appropriate forum than the court of
298 any other state under the factors set forth in subsection (3) of
299 section 12; and

300 3. Whether the court of any other state would have
301 jurisdiction under factual circumstances in substantial
302 conformity with the jurisdictional standards of section 9.

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

313 Section 14. Notice of proceeding.—If a petition for the
314 appointment of a guardian or issuance of a protective order is
315 brought in this state and this state was not the respondent's
316 home state on the date that the petition was filed, in addition
317 to complying with the notice requirements of this state, notice
318 of the petition must be given to those persons who would be
319 entitled to notice of the petition if a proceeding were brought

10-01713-10

20102488

320 in the respondent's home state. The notice must be given in the
321 same manner as notice is required to be given in this state.

322 Section 15. Proceedings in more than one state.—Except for
323 a petition for the appointment of a guardian in an emergency or
324 issuance of a protective order limited to property located in
325 this state under paragraph (1) (a) or paragraph (1) (b) of section
326 10, if a petition for the appointment of a guardian or issuance
327 of a protective order is filed in this state and in another
328 state and neither petition has been dismissed or withdrawn, the
329 following rules apply:

330 (1) If the court of this state has jurisdiction under
331 section 9, it may proceed with the case unless a court of
332 another state acquires jurisdiction under provisions similar to
333 section 9 before the appointment or issuance of the order.

334 (2) If the court of this state does not have jurisdiction
335 under section 9, whether at the time the petition is filed or at
336 any time before the appointment or issuance of the order, the
337 court shall stay the proceeding and communicate with the court
338 of the other state. If the court of the other state has
339 jurisdiction, the court of this state shall dismiss the petition
340 unless the court of the other state determines that the court of
341 this state is a more appropriate forum.

342 Section 16. Transfer of guardianship or conservatorship to
343 another state.—

344 (1) A guardian or conservator appointed in this state may
345 petition the court to transfer the guardianship or
346 conservatorship to another state.

347 (2) Notice of a petition under subsection (1) must be given
348 to the persons who would be entitled to notice of a petition in

10-01713-10

20102488

349 this state for the appointment of a guardian or conservator.

350 (3) On the court's own motion or upon request of the
351 guardian or conservator, the incapacitated or protected person,
352 or other person required to be notified of the petition, the
353 court shall hold a hearing on a petition filed pursuant to
354 subsection (1).

355 (4) The court shall issue an order provisionally granting a
356 petition to transfer a guardianship and shall direct the
357 guardian to petition for guardianship in the other state if the
358 court is satisfied that the guardianship will be accepted by the
359 court of the other state and the court finds that:

360 (a) The incapacitated person is physically present in or is
361 reasonably expected to move permanently to the other state;

362 (b) An objection to the transfer has not been made or, if
363 an objection has been made, the objector has not established
364 that the transfer would be contrary to the interests of the
365 incapacitated person; and

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

368 (5) The court shall issue a provisional order granting a
369 petition to transfer a conservatorship and shall direct the
370 conservator to petition for conservatorship in the other state
371 if the court is satisfied that the conservatorship will be
372 accepted by the court of the other state and the court finds
373 that:

374 (a) The protected person is physically present in or is
375 reasonably expected to move permanently to the other state, or
376 the protected person has a significant connection to the other
377 state considering the factors in section 7;

10-01713-10

20102488

378 (b) An objection to the transfer has not been made or, if
379 an objection has been made, the objector has not established
380 that the transfer would be contrary to the interests of the
381 protected person; and

382 (c) Adequate arrangements will be made for management of
383 the protected person's property.

384 (6) The court shall issue a final order confirming the
385 transfer and terminating the guardianship or conservatorship
386 upon its receipt of:

387 (a) A provisional order accepting the proceeding from the
388 court to which the proceeding is to be transferred; and

389 (b) The documents required to terminate a guardianship or
390 conservatorship in this state.

391 Section 17. Accepting guardianship or conservatorship
392 transferred from another state.-

393 (1) To confirm transfer of a guardianship or
394 conservatorship transferred to this state, the guardian or
395 conservator must petition the court of this state to accept the
396 guardianship or conservatorship. The petition must include a
397 certified copy of the other state's provisional order of
398 transfer.

399 (2) Notice of a petition under subsection (1) must be given
400 to those persons who would be entitled to notice if the petition
401 were a petition for the appointment of a guardian or issuance of
402 a protective order in both the transferring state and this
403 state. The notice must be given in the same manner as notice is
404 required to be given in this state.

405 (3) On the court's own motion or upon request of the
406 guardian or conservator, the incapacitated or protected person,

10-01713-10

20102488

407 or other person required to be notified of the proceeding, the
408 court shall hold a hearing on a petition filed pursuant to
409 subsection (1).

410 (4) The court shall issue an order provisionally granting a
411 petition filed under subsection (1) unless:

412 (a) An objection is made and the objector establishes that
413 transfer of the proceeding would be contrary to the interests of
414 the incapacitated or protected person; or

415 (b) The guardian or conservator is ineligible for
416 appointment in this state.

417 (5) The court shall issue a final order accepting the
418 proceeding and appointing the guardian or conservator as
419 guardian or conservator in this state upon its receipt from the
420 court from which the proceeding is being transferred of a final
421 order issued transferring the proceeding to this state.

422 (6) Not later than 90 days after issuance of a final order
423 accepting transfer of a guardianship or conservatorship, the
424 court shall determine whether the guardianship or
425 conservatorship needs to be modified to conform to the law of
426 this state.

427 (7) In granting a petition under this section, the court
428 shall recognize a guardianship or conservatorship order from the
429 other state, including the determination of the incapacitated or
430 protected person's incapacity and the appointment of the
431 guardian or conservator.

432 (8) The denial by a court of this state of a petition to
433 accept a guardianship or conservatorship transferred from
434 another state does not affect the ability of the guardian or
435 conservator to seek appointment as guardian or conservator in

10-01713-10

20102488

436 this state under chapter 744, Florida Statutes, if the court has
437 jurisdiction to make an appointment other than by reason of the
438 provisional order of transfer.

439 Section 18. Registration of guardianship.—If a guardian has
440 been appointed in another state and a petition for the
441 appointment of a guardian is not pending in this state, the
442 guardian appointed in the other state, after giving notice to
443 the appointing court of an intent to register, may register the
444 guardianship order in this state by filing as a foreign judgment
445 in a court, in any appropriate county of this state, certified
446 copies of the order and letters of office.

447 Section 19. Registration of protective orders.—If a
448 conservator has been appointed in another state and a petition
449 for a protective order is not pending in this state, the
450 conservator appointed in the other state, after giving notice to
451 the appointing court of an intent to register, may register the
452 protective order in this state by filing as a foreign judgment
453 in a court of this state, in any county in which property
454 belonging to the protected person is located, certified copies
455 of the order and letters of office and of any bond.

456 Section 20. Effect of registration.—

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

464 (2) A court of this state may grant any relief available

10-01713-10

20102488

465 under this act and other law of this state to enforce a
466 registered order.

467 Section 21. Uniformity of application and construction.—In
468 applying and construing this uniform act, consideration must be
469 given to the need to promote uniformity of the law with respect
470 to its subject matter among states that enact it.

471 Section 22. Relation to electronic signatures.—This act
472 modifies, limits, and supersedes the federal Electronic
473 Signatures in Global and National Commerce Act, 15 U.S.C. s.
474 7001, et seq., but does not modify, limit, or supersede s.
475 101(c) of that act, 15 U.S.C. s. 7001(c), or authorize
476 electronic delivery of any of the notices described in s. 103(b)
477 of that act, 15 U.S.C. s. 7003(b).

478 Section 23. Application.—This act applies to guardianship
479 and protective proceedings that are filed on or after July 1,
480 2010.

481 Section 24. This act shall take effect July 1, 2010.