

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 construction; creating s. 744.76,  
9           F.S.; providing definitions; creating s. 744.77, F.S.;  
10          providing that a foreign country is to be treated as a  
11          state; creating s. 744.78, F.S.; authorizing a court  
12          of this state to communicate with a court of another  
13          state; creating s. 744.79, F.S.; authorizing a court  
14          of this state to request a court of another state to  
15          conduct certain activities; creating s. 744.80, F.S.;  
16          providing that a witness located in another state may  
17          be deposed or may testify by certain means; creating  
18          s. 744.81, F.S.; providing factors for a court to  
19          consider when determining a significant connection  
20          with another state; creating s. 744.82, F.S.;  
21          providing that a court has special jurisdiction to  
22          undertake certain activities; creating s. 744.83,  
23          F.S.; providing when a court has exclusive and  
24          continuing jurisdiction over the proceeding; creating  
25          ss. 744.84 and 744.85, F.S.; providing when a court

26 | may decline jurisdiction; creating s. 744.86, F.S.;  
 27 | requiring notice to all parties; creating s. 744.87,  
 28 | F.S.; providing rules for when a petition for the  
 29 | appointment of a guardian is filed in this state and  
 30 | another state; creating s. 744.88, F.S.; providing for  
 31 | the transfer of a guardianship to another state;  
 32 | creating s. 744.89, F.S.; providing procedures for  
 33 | accepting transfer of a guardianship into this state;  
 34 | creating s. 744.90, F.S.; providing for the uniform  
 35 | application and construction of the part; creating s.  
 36 | 744.91, F.S.; providing that the part modifies,  
 37 | limits, and supersedes certain federal laws; creating  
 38 | s. 744.92, F.S.; providing applicability; providing an  
 39 | effective date.

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

42 |

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

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

49 |       744.74 Short title.—This act may be cited as the "Florida  
 50 | Guardianship and Protective Proceedings Jurisdiction Act."

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

53 744.75 Purpose; construction.—The purpose of this part is  
54 to provide clear direction to the courts, attorneys, guardians,  
55 and individuals about the proper jurisdiction for guardianship  
56 proceedings. This part is intended to supplement but not replace  
57 the current system for determining incompetency, appointing  
58 guardians, managing estates, and other procedures as governed by  
59 this chapter. The general purposes of this part are to:

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

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

65 (3) Avoid relitigating the guardianship decisions of  
66 others 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  
82 the court to act on behalf of a ward's person or property, or  
83 both.

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

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

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

98        (7) "Incapacitated person" means a person who has been  
99 adjudicated by a court of competent jurisdiction to lack the  
100 capacity to manage at least some of his or her property or to

101 meet at least some of his or her essential health and safety  
102 requirements and for whom a guardian has been appointed.

103 (8) "Interested person" has the same meaning as in s.  
104 731.201.

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

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,  
 149 | calendars, court records, and other administrative matters  
 150 | without making a 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 assessment be made of the  
 159 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 making reasonable  
 166 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  
 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 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  
195 to 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  
203 whom a provisional order to transfer the proceeding from another  
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  
212 to 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  
220 to 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  
 233 to read:

234 744.85 Jurisdiction declined by reason of conduct.—

235 (1) If at any time a court of this state determines that  
 236 it 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, protecting the respondent's  
 243 property, or 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 access 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  
258 to 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  
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  
266 to 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.

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

294        (3) On the court's own motion or upon request of the  
295 guardian, the incapacitated or protected person, or other person  
296 required to be notified of the petition, the court shall hold a  
297 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  
304 is 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  
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  
323 to 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 being 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  
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  
365 to 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  
371 to 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. s. 7001, et seq., but does not

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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  
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  
380 | to 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.