

TheThe Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1032

INTRODUCER: Senator Burgess

SUBJECT: Guardianships

DATE: January 21, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Pre-meeting
2.			CF	
3.			RC	

I. Summary:

SB 1032 establishes the Florida Guardianship Jurisdiction Act. The act is crafted to provide direction to courts, attorneys, guardians, and individuals when an adult guardianship proceeding involves this state and at least one other state.

The act is based on the model Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act developed by the Uniform Law Commission. The Uniform act, or a slight variation of the act, has been adopted in 46 states.

The focus of this bill, like the model act, is limited to resolving guardianship issues that occur when multiple state jurisdictions are involved, when complexities arise because a guardianship is transferred from one state to another, and when guardianships or orders in one state are sought to be recognized in another state. Accordingly, the bill establishes criteria for courts to use in determining which state’s courts are the most appropriate forum to assert jurisdiction over and resolve a guardianship issue.

II. Present Situation:

Guardianship

A guardianship is a legal concept in which a “guardian” is given the legal duty and authority to care for a “ward” or his or her property because the ward is considered incapable of acting for himself or herself.¹ The ward’s incapacity is most often due to infancy, disability, or incapacity. Guardianships are generally involuntary procedures and disfavored by courts because the ward loses his or her individual and civil rights. However, guardianships are necessary to protect the most vulnerable people who do not have the ability to function and protect themselves.

¹ BLACK’S LAW DICTIONARY, 11th edition, 2019.

Mobile Adults and Multiple Jurisdictions

As adults live longer, own property in multiple states, and have family members who reside in a variety of states, determining which state is the most appropriate forum for guardianship proceedings for an aging and infirm adult, often a parent, can be complicated. These factors for determining jurisdiction present complex issues for courts, attorneys, and guardians as they seek to unravel which state should have jurisdiction, how a guardianship may be transferred to another state, and to what extent one court must recognize a guardianship established in a different state.² As litigation continues among family members, emotions are strained, and considerable financial assets are expended, often reducing or depleting a ward's estate.

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA)

In an effort to resolve these issues that were consuming a substantial amount of legal resources, the Uniform Law Commission developed the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) in 2007.

The act has a narrow scope and deals solely with interstate jurisdiction and connected issues for adult guardianships. It has been adopted in 46 states, with Florida, Texas, Kansas, and Michigan being the exceptions to adoption.³

Many of the provisions to the UAGPPJA are similar to those in the Uniform Child Custody Jurisdiction and Enforcement Act which were codified in Part II of chapter 61, F.S., in 2002. Moreover, the purposes of the UAGPPA and the UCCJEA are similar. The purposes of the UCCJEA include avoiding jurisdictional competition and conflict with courts of other states regarding child custody matters and ensuring that that child custody cases are decided in the most appropriate state.⁴

III. Effect of Proposed Changes:

The Florida Guardianship Jurisdiction Act

Chapter 744, F.S., the guardianship chapter, is currently divided into eight parts. This bill creates a new part in ch. 744, F.S., a part which creates 24 statutes.

Section 1 creates the new "Part IX" of chapter 744, F.S., titled the "Florida Guardianship Jurisdiction Act."

Section 2 provides the short title of the act which is the "Florida Guardianship Jurisdiction Act."(s. 744.74, F.S.)

² American Bar Association, Commission on Law and Aging, *State Adult Guardianship Legislation: Directions of Reform – 2013*, https://www.americanbar.org/content/dam/aba/administrative/law_aging/2013_final_guardianship_legislative_update_12-18-13.pdf.

³ Uniform Law Commission, *Adult Guardianship and Protective Proceedings Jurisdiction Act*, <https://www.uniformlaws.org/committees/community-home?CommunityKey=0f25ccb8-43ce-4df5-a856-e6585698197a> (last visited Jan. 17, 2022).

⁴ Section 61.502, F.S.

Section 3 establishes the purpose and construction of the part. The section explains that the purpose of the “part is to provide clear direction to the courts, attorneys, guardians, and individuals about the proper jurisdiction for guardianship proceedings.” This act clarifies that it is intended to supplement, but not replace, the current method for determining incapacity, appointing guardians, managing estates, and other procedures as governed by the chapter. The general purposes of this part are to:

- Avoid jurisdictional competition and conflict with courts of other states in matters of guardianship.
- Establish procedures for transferring guardianship from one state to another state when the incapacitated adult moves.
- Avoid relitigating the guardianship decisions of other states in this state.
- Discourage the use of the interstate system for continuing controversies over guardianship.
- Provide a uniform national system for registration and enforcement of out-of-state guardianship orders. (s. 744.75, F.S.)

Section 4 defines 14 terms used in the act: adult, emergency, guardian, guardianship order, guardianship proceeding, home state, incapacitated person, interested person, party, person, respondent, significant-connection state, state, and ward. (s. 744.76, F.S.)

Key among these terms are the definitions of “home state” and “significant-connection state.” When a court seeks to determine which state’s courts provide the most appropriate forum, these two terms are decisive:

- “Home state” The home state is the state where the individual was physically present for at least 6 consecutive months immediately before the filing of a petition for incapacity, guardianship, or similar petition. This 6-month period also includes any time of temporary absence. If no home state exists, then his or her home state is the state where he or she was physically present, including any period of temporary absence, for at least 6 consecutive months, ending within the 6 months immediately before the filing of the petition. This definition also means that the home state’s jurisdiction to appoint a guardian or issue a protective order for someone continues for a period of up to 6 months after the person relocates to another state.⁵
- A “significant-connection state” is a slightly broader concept than the home state. It means a state, other than the home state, where the respondent has a significant connection other than mere physical presence, and where substantial evidence concerning the respondent is available.⁶

According to the notes drafted by the National Conference of Commissioner on Uniform State Laws, a respondent in a guardianship proceeding will have only one single home state, but may have several states that are determined to be significant-connection states.⁷

⁵ National Conference of Commissioners on Uniform State Laws, *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007)*, 2 – 3
<https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=669b547e-a76e-6532-a13c-f97fd4f32d7f>.

⁶ *Id.*, at 3.

⁷ *Id.*

Section 5 addresses how guardianship orders issued in other countries are applicable to this act. The act requires a state court to treat a foreign country as though it were a state of the United States for purposes of applying the part. (s. 774.77, F.S.) This provision is similar to how this state's courts are directed to treat child custody determinations made in a foreign country under s. 61.506, F.S., part of this state's Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Section 6 addresses communication between courts but does not specify a particular method that must be used. A court in this state is authorized to communicate with a court in another state when proceedings arise under this part. If the court so chooses to communicate with another court, it must make a record of the communication. When communications are conducted between the courts of different states, an interested person must be able to participate, either in person, or by some remote means, and the interested person does not need to be a party to the internal communications between the court clerks. (s. 744.78, F.S.) These procedures for communications between courts are nearly identical to those authorized under s. 61.511, F.S., part of this state's UCCJEA.

Section 7 recognizes that cooperation among the various courts is essential for this act to succeed across multiple states. This section provides that a Florida court, in a guardianship proceeding conducted in this state, may request the appropriate court of another state to do the following:

- Hold a hearing.
- Order a person in the other state to produce evidence or give testimony pursuant to procedures of that state.
- Order that an evaluation or assessment be made of the respondent.
- Order any appropriate investigation of a person involved in a proceeding.
- Forward to a court of this state a certified copy of the transcript or other records of a hearing or any other proceeding, any evidence otherwise produced under the procedures of that state, and any evaluation or assessment prepared in compliance with an order requiring an evaluation or assessment or investigation involving a person in the proceeding.
- Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person.
- Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. s. 160.103.

If a court of another state in which a guardianship proceeding is pending requests the kind of assistance described above, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request. The language in the bill does not describe how costs and expenses are to be assessed, but leaves the issue to be determined by local law.⁸ (s. 744.79, F.S.) The procedures authorized by this section are similar to those in s. 61.513, F.S., part of this state's UCCJEA.

⁸ *Id.*, at 12.

Section 8 provides for the taking of testimony in another state. If all the parties agree, a court in this state may permit a witness in another state to be deposed or testify by phone, audiovisual, or other electronic means.

When documentary evidence is transmitted from another state to a court of this state by technological means and it does not produce an original writing, it may be excluded from evidence after a court determines its admissibility. (s. 744.80, F.S.) The procedures authorized by this section are similar to those in s. 61.512, F.S., part of this state's UCCJEA.

Section 9 specifies the elements that a court must consider when determining "significant-connection factors." When a court is determining whether a respondent has a significant connection with a particular state, the court must consider the following:

- The location of the respondent's family and other persons required to be notified of the guardianship proceeding.
- The length of time that the respondent was physically present in the state at any point in time and the duration of any absence.
- The location of the respondent's property.
- The extent to which the respondent has ties to the state, such as voting registration, state or local tax return filing, vehicle registration, driver license, social relationships, and receipt of services. (s. 744.81, F.S.)

Section 10 states that this Part IX provides the exclusive jurisdictional basis for a court of this state to appoint a guardian for an adult. (s. 744.82, F.S.) Accordingly, this state would have jurisdiction if this state is the home state for an alleged incapacitated person and may have jurisdiction if it is a significant-connection state.

Moreover, the bill would be a limit on the venue provision in existing s. 744.1097(1), F.S., which states that the venue for proceedings for determination of incapacity could be in the county where the alleged incapacitate person is "found."

Section 11 addresses the issue of jurisdiction. The National Conference of Commissioners of Uniform State Laws explains that the primary objective of this provision is to eliminate the possibility of dual appointments or orders. The act creates a three-level priority scheme for deciding which state has jurisdiction to appoint a guardian. The first priority is the home state, followed by a state where the respondent has significant connections, and then other jurisdictions.⁹

This section provides that a court of this state has jurisdiction to determine incapacity, appoint a guardian, or undertake similar proceedings if *any* of the following applies:

- This state is the respondent's home state.
- On the date a petition is filed, this state is a significant-connection state and:
 - The respondent does not have a home state, or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

⁹ *Id.*, at 18.

- The respondent has a home state but a petition for an appointment or order is not pending in a court of that state or another significant-connection state, *and* before the court of this state makes the appointment or issues an order:
 - A petition to determine incapacity, appoint a guardian, or other similar proceeding is not filed in the respondent's home state;
 - An objection to the jurisdiction of the court of this state is not filed by a person required to be notified of the proceeding; and
 - The court of this state concludes that it is the appropriate forum after considering the factors set forth in s. 744.86, F.S.
- This state does not have jurisdiction under the above criteria, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the State Constitution and the United States Constitution.
- The requirements for special jurisdiction under s. 744.84 are met. (s. 744.83, F.S.)

Section 12 lists the special circumstances in which a court that does not have jurisdiction under s. 744.83, F.S., is granted special jurisdiction, which is jurisdiction for limited purposes. A court of this state has jurisdiction to do the following:

- In accordance with the guardianship chapter, appoint an emergency temporary guardian for a person who is physically present in this state.
- Appoint a guardian for an incapacitated person for whom a provisional order to transfer the proceeding from another state has been issued.

If a petition for the appointment of an emergency temporary guardian is brought in this state but this state was not the respondent's home state on the date that the petition was filed, the court must dismiss the proceeding at the request of the court of the home state, if any such request is made, only after a hearing and judicial determination of the appropriate forum of the alleged incapacitated person based on those factors as set forth in s. 744.86, F.S., whether by the home state or this state. If, after the hearing, the home state and this state differ in their determination of which state is the appropriate forum, the home state's determination will prevail, whether dismissal is requested before or after the emergency appointment. (s. 744.84, F.S.)

Section 13 establishes exclusive and continuing jurisdiction. Except as otherwise provided in s. 744.84, F.S., a court that appoints a guardian consistent with this part has exclusive and continuing jurisdiction over the proceeding, but only until:

- A determination is made as to the proper jurisdiction of the action;
- The jurisdiction is terminated by the court; or
- The appointment or order expires by its own terms. (s. 744.85, F.S.)

Section 14 provides the criteria for determining the appropriate forum for a guardianship. A court of this state having jurisdiction to appoint a guardian may decline to exercise its jurisdiction if the court determines at any time that a court of another state is a more appropriate forum. If a court of this state declines to exercise its jurisdiction it must dismiss or stay the proceeding. The court may impose any condition that it considers just and proper, including requiring that a petition for the appointment of a guardian or issuance of a similar petition be filed promptly in another state.

In determining whether it is an appropriate forum, the court must consider all relevant factors, which include:

- Any expressed preference of the respondent.
- Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur, and which state could best protect the respondent from the abuse, neglect, or exploitation.
- The length of time the respondent was physically present in or was a legal resident of this or another state.
- The distance of the respondent from the court in each state.
- The financial circumstances of the respondent's estate.
- The nature and location of the evidence.
- The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.
- The familiarity of the court of each state with the facts and issues in the proceeding.
- If an appointment was made, the court's ability to monitor the conduct of the guardian or conservator. (s. 744.86, F.S.)

The provisions of this section are similar to those of s. 61.520, F.S., of this state's UCCJEA. Courts of this state may decline to exercise jurisdiction over a child custody matter if, based on a number of factors, the court of another state is a more appropriate forum.

Section 15 explains when jurisdiction may be declined due to someone's conduct. If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian because a person seeking to invoke its jurisdiction engaged in unjustifiable conduct, the court may:

- Decline to exercise jurisdiction; or
- Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or protecting the respondent's property, or both, including staying the proceeding until a petition for the appointment of a guardian is filed in a court of another state having jurisdiction.

If a court of this state determines that it acquired jurisdiction to appoint a guardian because a person seeking to invoke its jurisdiction engaged in bad faith or unlawful conduct, the court may assess that person necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. However, the court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this part. (s. 744.87, F.S.)

The provisions of this section have similarities to s. 61.521, F.S., of this state's UCCJEA.

Section 16 describes the required notice for guardianship proceedings. If a petition for the appointment of a guardian is brought in this state but this state is not the respondent's home state on the date that the petition is filed, the petitioner must provide notice of the petition to those persons who would be entitled to notice of the petition both in this state and in the respondent's home state. (s. 744.88, F.S.)

Section 17 explains what must happen when guardianship proceedings are filed in more than one state. Except for a petition for the appointment of a guardian in an emergency, if a petition for the appointment of a guardian is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

- If the court of this state has jurisdiction under this chapter, it may proceed with the case unless a court of another state acquires jurisdiction *before* the appointment of the guardian or the issuance of the order.
- If the court of this state does not have jurisdiction under this chapter after a hearing and judicial determination, whether at the time the petition is filed or at any time before the appointment of a guardian or issuance of an order, the court must stay the proceeding and communicate with the court of the other state. If the court of the other state has jurisdiction after a hearing and judicial determination, the court of this state must dismiss the petition unless the court of the other state determines that the court of this state is a more appropriate forum. (s. 744.89, F.S.)

The procedures of this section are similar to the procedures in s. 61.519, F.S., of this state's UCCJEA, addressing simultaneous child custody proceedings in more than one state.

Section 18 explains how a guardianship must be *transferred* to another state. A guardian appointed in this state may petition the court to transfer the guardianship to another state. However, notice of a petition must be given to all parties who would be entitled to notice of a petition in this state for the appointment of a guardian or a petition for a change of residence of the ward.

On the court's own motion or upon the request of the guardian, the incapacitated person, or both, the court must hold a hearing on a petition filed as described above. The court may issue an order provisionally granting a petition to transfer a guardianship and must direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will likely be accepted by the court of the other state *and* the court finds that:

- The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;
- An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the best interests of the incapacitated person; and
- Plans for the care and services for the incapacitated person in the other state are reasonable and sufficient.

The court must issue a final order confirming the transfer and terminating the guardianship upon its receipt of:

- A provisional order accepting the proceeding from the court to which the proceeding is to be transferred and issued under provisions similar to s. 744.89, F.S.; and
- The documents required, including any required accountings, to terminate a guardianship in this state.

The guardian of the ward in this state must file a petition for discharge in accordance with part VII of ch. 744 within 60 days after receipt of an order confirming the transfer of the guardianship to another jurisdiction. (s. 744.90, F.S.)

Section 19 provides how a guardianship is *accepted* in this state when it is transferred from another state. Within 60 days after the residence of a ward of a foreign guardian is moved to this state, the foreign guardian appointed in another state must file a petition to determine incapacity and a petition to appoint a guardian with the clerk of court in the county in which the ward resides. The petitions must include a certified copy of the other state's provisional order of transfer, in addition to a certified copy of the guardian's letters of guardianship or the equivalent.

Notice of the petitions must be given to those persons who would be entitled to notice in this state in the same manner that notice is required to be given in this state and in the respondent's home state. The court must hold a hearing on the petitions filed pursuant to the procedures set forth in this chapter.

The court must issue orders provisionally granting the petitions unless:

- An objection is made and the objector establishes that transfer of the proceeding would be contrary to the best interests of the ward; or
- The guardian is ineligible for appointment in this state.

Until a guardian is appointed in this state for the ward or the ward is determined to not require a guardian in this state, the foreign guardian's authority is recognized and given full faith and credit in the courts of this state, provided that the guardian is qualified to serve as the guardian of the ward in this state. However, a foreign guardian who fails to comply with the requirements of this section has no authority to act on behalf of the ward in this state.

After appointment of a guardian in this state, the court may issue the orders necessary to complete the transfer of the foreign guardianship to this state or the termination of the foreign guardianship, as may be required.

The authority of the guardian of a nonresident ward shall be recognized and given full faith and credit in the courts of this state. A guardian appointed in another state or country may maintain or defend any action in this state as a representative of the ward unless a guardian has been appointed in this state. (s. 744.92, F.S.)

Section 20 governs the registration of guardianship orders. If a guardian has been appointed in another state and a petition for the appointment of a guardianship is not pending in this state, the guardian appointed in the other state, after giving notice of the appointment to the appointing court of the intent to register, may register the guardianship order in this state by filing it as a foreign judgment in a court of this state pursuant to ss. 744.307 and 744.308. (s. 744.92, F.S.)

Section 21 speaks to the effect of registering a guardianship order from another state. Upon the registration of a guardianship order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment, except as prohibited under the laws of this state and, if the guardian is not a resident of this state, subject to any conditions imposed upon nonresident parties. (s. 744.93, F.S.)

Section 22 addresses the need for uniformity of application and construction. When this part is applied and construed, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (s. 744.94, F.S.)

Section 23 explains the relationship of this act to the federal Electronic Signatures in Global and National Commerce Act (E-SIGN). E-SIGN contains a unique provision allowing reverse-preemption by state laws based on the Uniform Electronic Transactions Act (UETA). Florida adopted UETA in 2000. Since 2000, all uniform acts that could potentially involve electronic transactions contain this language. By enacting this section, any electronic signatures or transactions related to the new act will be governed by Florida law, s. 668.50, F.S., rather than by federal law.

Section 24 addresses the application date of this part. This newly created part in ch. 744, F.S., applies to guardianship and similar proceedings filed on or after July 1, 2022.

The bill takes effect July 1, 2022.

Concerns With Conflicts in Current Law

Because this bill creates significant portions of new law that overlap, and possibly conflict, with existing guardianship laws contained in ch. 744, F.S., it is likely that substantial changes will need to be made to the bill and current law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

By enacting provisions of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and its criteria for determining the most appropriate state to exercise jurisdiction over a guardianship matter, there may be a disincentive for persons to commence guardianship proceedings in an inappropriate forum. This in turn may reduce litigation costs that often reduce the assets of a ward or alleged incapacitated person which would otherwise be available for his or her care and needs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 5 requires a court of this state to treat a foreign country as though it were a state of the United States for purposes of applying this part. This language is mandatory, not permissive and could be problematic. If the foreign country does not recognize individual liberties or have humane guardianship laws that require the examination of an individual's capacity before his or her rights are removed, the effect would seem to be to award respect for a government that is less responsible to the needs of a ward. Section 61.506, F.S., of this states Uniform Child Custody Jurisdiction and Enforcement Act addresses similar concerns by stating that the UCCJEA does not apply to the child custody orders of a foreign country which "violate[] fundamental principles of human rights." Perhaps section 5 of the bill should contain some similar limitation or be permissive, not mandatory.

At line 186, the word "given" should be changed to the word "give."

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 744.74, 744.96, 744.75, 744.76, 744.77, 744.78, 744.79, 744.80, 744.81, 744.82, 744.83, 744.84, 744.85, 744.86, 744.87, 744.88, 744.89, 744.90, 744.91, 744.92, 744.93, 744.94, and 744.95.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
