

By Senator Burgess

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1 A bill to be entitled
2 An act relating to guardianships; creating part IX of
3 ch. 744, Florida Statutes, entitled the "Florida
4 Guardianship Jurisdiction Act"; creating s. 744.74,
5 F.S.; providing a short title; creating s. 744.75,
6 F.S.; providing legislative purpose and construction;
7 creating s. 744.76, F.S.; defining terms; creating s.
8 744.77, F.S.; providing construction relating to
9 international application; creating s. 744.78, F.S.;
10 authorizing courts of this state to communicate with
11 courts of another state relating to certain
12 proceedings; requiring courts of this state to make a
13 record of such communication; specifying
14 communications that interested persons must be able to
15 participate in; creating s. 744.79, F.S.; specifying
16 actions that a court of this state may request from,
17 and perform for, a court of another state in certain
18 guardianship proceedings; creating s. 744.80, F.S.;
19 authorizing courts of this state to permit witness
20 testimony by certain means; providing that certain
21 evidence may be excluded after a judicial
22 determination of admissibility; creating s. 744.81,
23 F.S.; specifying factors a court must consider in
24 determining whether a respondent has a significant
25 connection with a particular state; creating s.
26 744.82, F.S.; providing construction relating to the
27 basis for jurisdiction; creating s. 744.83, F.S.;
28 specifying circumstances when a court of this state
29 has jurisdiction in certain guardianship proceedings;

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30 creating s. 744.84, F.S.; specifying the special
31 jurisdiction of courts of this state; providing
32 procedures relating to the appointment of an emergency
33 temporary guardian under certain circumstances;
34 creating s. 744.85, F.S.; providing that a court that
35 has appointed a guardian has exclusive and continuing
36 jurisdiction until certain conditions are met;
37 creating s. 744.86, F.S.; authorizing a court of this
38 state to decline to exercise its jurisdiction under
39 certain circumstances; specifying requirements for
40 such court; specifying factors a court must consider
41 in determining whether it is an appropriate forum;
42 creating s. 744.87, F.S.; authorizing a court to
43 decline to exercise jurisdiction or to exercise
44 jurisdiction for a limited purpose under certain
45 circumstances; authorizing a court to assess certain
46 expenses against certain persons; prohibiting the
47 court from assessing certain fees, costs, or expenses
48 against this state; creating s. 744.88, F.S.;

49 providing notice requirements for certain petitions to
50 appoint a guardian; creating s. 744.89, F.S.;

51 providing procedures when certain proceedings are
52 pending in more than one state; creating s. 744.90,
53 F.S.; authorizing a guardian appointed in this state
54 to petition to transfer the guardianship to another
55 state; providing notice requirements; providing
56 requirements and procedures for the court; specifying
57 conditions before a court issues a final order
58 confirming the transfer and terminating the

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59 guardianship; providing a requirement for the guardian
60 in filing a petition for discharge; creating s.
61 744.91, F.S.; specifying requirements and procedures
62 for the transfer of a guardianship from another state;
63 providing construction; creating s. 744.92, F.S.;
64 providing a procedure for registering guardianship
65 orders in this state under certain circumstances;
66 creating s. 744.93, F.S.; providing construction
67 relating to the effect of registering a guardianship
68 order; creating s. 744.94, F.S.; providing
69 construction relating to uniformity of law; creating
70 s. 744.95, F.S.; providing construction relating to
71 the federal Electronic Signatures in Global and
72 National Commerce Act; creating s. 744.96, F.S.;
73 providing applicability; providing an effective date.
74

75 Be It Enacted by the Legislature of the State of Florida:
76

77 Section 1. Part IX of chapter 744, Florida Statutes,
78 consisting of ss. 744.74-744.96, Florida Statutes, is created
79 and entitled the "Florida Guardianship Jurisdiction Act."

80 Section 2. Section 744.74, Florida Statutes, is created to
81 read:

82 744.74 Short title.—This act may be cited as the "Florida
83 Guardianship Jurisdiction Act."

84 Section 3. Section 744.75, Florida Statutes, is created to
85 read:

86 744.75 Purpose; construction.—The purpose of this part is
87 to provide clear direction to the courts, attorneys, guardians,

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88 and individuals about the proper jurisdiction for guardianship
89 proceedings. This part is intended to supplement, but not
90 replace, the current system for determining incapacity,
91 appointing guardians, managing estates, and other procedures as
92 governed by this chapter. The general purposes of this part are
93 to:

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

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

98 (3) Avoid relitigating the guardianship decisions of other
99 states in this state.

100 (4) Discourage the use of the interstate system for
101 continuing controversies over guardianship.

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

104 Section 4. Section 744.76, Florida Statutes, is created to
105 read:

106 744.76 Definitions.—As used in this part, the term:

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

109 (2) "Emergency" means imminent danger that the physical or
110 mental health or safety of the respondent will be seriously
111 impaired or that the respondent's property is in danger of being
112 wasted, misappropriated, or lost unless immediate action is
113 taken.

114 (3) "Guardian" has the same meaning as in s. 744.102 and
115 includes a limited or plenary guardian or an emergency temporary
116 guardian as set forth in this chapter.

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117 (4) "Guardianship order" means an order appointing a
118 guardian.

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

122 (6) "Home state" means the state in which the respondent
123 was physically present, including any period of temporary
124 absence, for at least 6 consecutive months immediately before
125 the filing of a petition for incapacity, guardianship, or
126 similar petition. If no such state exists, then the home state
127 is the state in which the respondent was physically present,
128 including any period of temporary absence, for at least 6
129 consecutive months ending within the 6 months immediately before
130 the filing of the petition.

131 (7) "Incapacitated person" means a person who has been
132 adjudicated by a court of competent jurisdiction to lack the
133 capacity to manage at least some of his or her property or to
134 meet at least some of his or her essential health and safety
135 requirements, and for whom a guardian has been appointed.

136 (8) "Interested person" has the same meaning as in s.
137 731.201.

138 (9) "Party" means the respondent, petitioner, guardian,
139 conservator, or any other person allowed by the court to
140 participate in a guardianship, incapacity, or similar
141 proceeding.

142 (10) "Person," except when used in the term incapacitated
143 person, includes individuals, children, firms, associations,
144 joint adventures, partnerships, estates, trusts, business
145 trusts, syndicates, fiduciaries, corporations, and all other

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146 groups or combinations as defined in s. 1.01(3).

147 (11) "Respondent" means an adult for whom the appointment
148 of a guardian is sought.

149 (12) "Significant-connection state" means a state, other
150 than the home state, with which a respondent has a significant
151 connection other than mere physical presence, and in which
152 substantial evidence concerning the respondent is available.

153 (13) "State" means a state of the United States, the
154 District of Columbia, Puerto Rico, the United States Virgin
155 Islands, a federally recognized Indian tribe, or any territory
156 or insular possession subject to the jurisdiction of the United
157 States.

158 (14) "Ward" means a person for whom a guardian or
159 conservator has been appointed.

160 Section 5. Section 744.77, Florida Statutes, is created to
161 read:

162 744.77 International application of part.—A court of this
163 state shall treat a foreign country as if it were a state of the
164 United States for purposes of applying this part.

165 Section 6. Section 744.78, Florida Statutes, is created to
166 read:

167 744.78 Communication between courts.—

168 (1) A court of this state may communicate with a court of
169 another state concerning a proceeding arising under this part;
170 however, the court of this state shall make a record of the
171 communication.

172 (2) Communications between courts may not occur without the
173 ability of interested persons to also participate in the
174 communication, either in person or by other means of

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175 participation. Interested persons need not be a party to the
176 internal communications between the clerks of the various
177 courts.

178 Section 7. Section 744.79, Florida Statutes, is created to
179 read:

180 744.79 Cooperation between courts.—

181 (1) In a guardianship proceeding in this state, a court of
182 this state may request the appropriate court of another state to
183 do any of the following:

184 (a) Hold a hearing.

185 (b) Order a person in that state to produce evidence or
186 given testimony pursuant to procedures of that state.

187 (c) Order that an evaluation or assessment be made of the
188 respondent.

189 (d) Order any appropriate investigation of a person
190 involved in a proceeding.

191 (e) Forward to the court of this state a certified copy of
192 the transcript or other records of a hearing under paragraph (a)
193 or any other proceeding, any evidence otherwise produced under
194 paragraph (b), and any evaluation or assessment prepared in
195 compliance with an order under paragraph (c) or paragraph (d).

196 (f) Issue any order necessary to assure the appearance in
197 the proceeding of a person whose presence is necessary for the
198 court to make a determination, including the respondent or the
199 incapacitated or protected person.

200 (g) Issue an order authorizing the release of medical,
201 financial, criminal, or other relevant information in that
202 state, including protected health information as defined in 45
203 C.F.R. s. 160.103.

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204 (2) If a court of another state in which a guardianship
205 proceeding is pending requests the kind of assistance described
206 in subsection (1), a court of this state has jurisdiction for
207 the limited purpose of granting the request or making reasonable
208 efforts to comply with the request.

209 Section 8. Section 744.80, Florida Statutes, is created to
210 read:

211 744.80 Taking testimony in another state.-

212 (1) In a guardianship proceeding, upon agreement of all the
213 parties, a court of this state may permit a witness located in
214 another state to be deposed or to testify by telephone,
215 audiovisual, or other electronic means.

216 (2) Documentary evidence transmitted from another state to
217 a court of this state by technological means that does not
218 produce an original writing may be excluded from evidence after
219 a judicial determination of admissibility.

220 Section 9. Section 744.81, Florida Statutes, is created to
221 read:

222 744.81 Significant-connection factors.-In determining
223 whether a respondent has a significant connection with a
224 particular state, the court shall consider the following:

225 (1) The location of the respondent's family and other
226 persons required to be notified of the guardianship proceeding.

227 (2) The length of time that the respondent was physically
228 present in the state at any point in time and the duration of
229 any absence.

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

231 (4) The extent to which the respondent has ties to the
232 state, such as voting registration, state or local tax return

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233 filing, vehicle registration, driver license, social
234 relationships, and receipt of services.

235 Section 10. Section 744.82, Florida Statutes, is created to
236 read:

237 744.82 Exclusive basis for jurisdiction.—This part provides
238 the exclusive jurisdictional basis for a court of this state to
239 appoint a guardian for an adult.

240 Section 11. Section 744.83, Florida Statutes, is created to
241 read:

242 744.83 Jurisdiction.—A court of this state has jurisdiction
243 to determine incapacity, appoint a guardian, or undertake
244 similar proceedings if any of the following applies:

245 (1) This state is the respondent's home state.

246 (2) On the date a petition is filed, this state is a
247 significant-connection state and:

248 (a) The respondent does not have a home state, or a court
249 of the respondent's home state has declined to exercise
250 jurisdiction because this state is a more appropriate forum; or

251 (b) The respondent has a home state but a petition for an
252 appointment or order is not pending in a court of that state or
253 another significant-connection state, and before the court of
254 this state makes the appointment or issues an order:

255 1. A petition to determine incapacity, appoint a guardian,
256 or other similar proceeding is not filed in the respondent's
257 home state;

258 2. An objection to the jurisdiction of the court of this
259 state is not filed by a person required to be notified of the
260 proceeding; and

261 3. The court of this state concludes that it is the

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262 appropriate forum after considering the factors set forth in s.
263 744.86.

264 (3) This state does not have jurisdiction under subsection
265 (1) or subsection (2), the respondent's home state and all
266 significant-connection states have declined to exercise
267 jurisdiction because this state is the more appropriate forum,
268 and jurisdiction in this state is consistent with the State
269 Constitution and the United States Constitution.

270 (4) The requirements for special jurisdiction under s.
271 744.84 are met.

272 Section 12. Section 744.84, Florida Statutes, is created to
273 read:

274 744.84 Special jurisdiction.—

275 (1) A court of this state has jurisdiction to do the
276 following:

277 (a) In accordance with this chapter, appoint a temporary
278 guardian in an emergency for a person who is physically present
279 in this state.

280 (b) Appoint a guardian for an incapacitated person for whom
281 a provisional order to transfer the proceeding from another
282 state has been issued.

283 (2) If a petition for the appointment of an emergency
284 temporary guardian is brought in this state and this state was
285 not the respondent's home state on the date that the petition
286 was filed, the court must dismiss the proceeding at the request
287 of the court of the home state, if any such request was made,
288 only after a hearing and judicial determination of the
289 appropriate forum of the alleged incapacitated person based on
290 those factors as set forth in s. 744.86, whether by the home

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291 state or this state. If, after the hearing, the home state and
292 this state differ in their determination of which is the
293 appropriate forum, the home state shall prevail, whether
294 dismissal is requested before or after the emergency
295 appointment.

296 Section 13. Section 744.85, Florida Statutes, is created to
297 read:

298 744.85 Exclusive and continuing jurisdiction.—Except as
299 otherwise provided in s. 744.84, a court that has appointed a
300 guardian consistent with this part has exclusive and continuing
301 jurisdiction over the proceeding only until a determination is
302 made as to the proper jurisdiction of the action, the
303 jurisdiction is terminated by the court, or the appointment or
304 order expires by its own terms.

305 Section 14. Section 744.86, Florida Statutes, is created to
306 read:

307 744.86 Appropriate forum.—

308 (1) A court of this state having jurisdiction to appoint a
309 guardian may decline to exercise its jurisdiction if it
310 determines at any time that a court of another state is a more
311 appropriate forum.

312 (2) If a court of this state declines to exercise its
313 jurisdiction under subsection (1), it must dismiss or stay the
314 proceeding. The court may impose any condition that the court
315 considers just and proper, including requiring that a petition
316 for the appointment of a guardian or issuance of similar
317 petition be filed promptly in another state.

318 (3) In determining whether it is an appropriate forum, the
319 court shall consider all relevant factors, including:

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- 320 (a) Any expressed preference of the respondent.
- 321 (b) Whether abuse, neglect, or exploitation of the
 322 respondent has occurred or is likely to occur, and which state
 323 could best protect the respondent from the abuse, neglect, or
 324 exploitation.
- 325 (c) The length of time the respondent was physically
 326 present in or was a legal resident of this or another state.
- 327 (d) The distance of the respondent from the court in each
 328 state.
- 329 (e) The financial circumstances of the respondent's estate.
- 330 (f) The nature and location of the evidence.
- 331 (g) The ability of the court in each state to decide the
 332 issue expeditiously and the procedures necessary to present
 333 evidence.
- 334 (h) The familiarity of the court of each state with the
 335 facts and issues in the proceeding.
- 336 (i) If an appointment was made, the court's ability to
 337 monitor the conduct of the guardian or conservator.
- 338 Section 15. Section 744.87, Florida Statutes, is created to
 339 read:
- 340 744.87 Jurisdiction declined by reason of conduct.—
- 341 (1) If at any time a court of this state determines that it
 342 acquired jurisdiction to appoint a guardian because a person
 343 seeking to invoke its jurisdiction engaged in unjustifiable
 344 conduct, the court may:
- 345 (a) Decline to exercise jurisdiction; or
- 346 (b) Exercise jurisdiction for the limited purpose of
 347 fashioning an appropriate remedy to ensure the health, safety,
 348 and welfare of the respondent or protecting the respondent's

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349 property, or both, including staying the proceeding until a
350 petition for the appointment of a guardian is filed in a court
351 of another state having jurisdiction.

352 (2) If a court of this state determines that it acquired
353 jurisdiction to appoint a guardian because a person seeking to
354 invoke its jurisdiction engaged in bad faith or unlawful
355 conduct, it may assess that person necessary and reasonable
356 expenses, including attorney fees, investigative fees, court
357 costs, communication expenses, witness fees and expenses, and
358 travel expenses. The court may not assess fees, costs, or
359 expenses of any kind against this state or a governmental
360 subdivision, agency, or instrumentality of this state unless
361 authorized by law other than this part.

362 Section 16. Section 744.88, Florida Statutes, is created to
363 read:

364 744.88 Notice of proceeding.—If a petition for the
365 appointment of a guardian is brought in this state and this
366 state was not the respondent's home state on the date that the
367 petition was filed, the petitioner must provide notice of the
368 petition to those persons who would be entitled to notice of the
369 petition in this state and in the respondent's home state.

370 Section 17. Section 744.89, Florida Statutes, is created to
371 read:

372 744.89 Proceedings in more than one state.—Except for a
373 petition for the appointment of a guardian in an emergency, if a
374 petition for the appointment of a guardian is filed in this
375 state and in another state and neither petition has been
376 dismissed or withdrawn, the following rules apply:

377 (1) If the court of this state has jurisdiction under this

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378 chapter, it may proceed with the case unless a court of another
379 state acquires jurisdiction before the appointment of the
380 guardian or issuance of the order.

381 (2) If the court of this state does not have jurisdiction
382 under this chapter after a hearing and judicial determination of
383 same, whether at the time the petition is filed or at any time
384 before the appointment of a guardian or issuance of an order,
385 the court must stay the proceeding and communicate with the
386 court of the other state. If the court of the other state has
387 jurisdiction after a hearing and judicial determination of same,
388 the court of this state must dismiss the petition unless the
389 court of the other state determines that the court of this state
390 is a more appropriate forum.

391 Section 18. Section 744.90, Florida Statutes, is created to
392 read:

393 744.90 Transfer of guardianship to another state.—

394 (1) A guardian appointed in this state may petition the
395 court to transfer the guardianship to another state.

396 (2) Notice of a petition under subsection (1) must be given
397 to all parties who would be entitled to notice of a petition in
398 this state for the appointment of a guardian or a petition for a
399 change of residence of the ward.

400 (3) On the court's own motion or upon request of the
401 guardian, the incapacitated person, or both, the court shall
402 hold a hearing on a petition filed under subsection (1).

403 (4) The court may issue an order provisionally granting a
404 petition to transfer a guardianship and shall direct the
405 guardian to petition for guardianship in the other state if the
406 court is satisfied that the guardianship will likely be accepted

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407 by the court of the other state and the court finds that:

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

410 (b) An objection to the transfer has not been made or, if
411 an objection has been made, the objector has not established
412 that the transfer would be contrary to the best interests of the
413 incapacitated person; and

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

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

418 (a) A provisional order accepting the proceeding from the
419 court to which the proceeding is to be transferred and issued
420 under provisions similar to s. 744.89; and

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

423 (6) The guardian of the ward in this state shall file a
424 petition for discharge in accordance with part VII of this
425 chapter within 60 days after receipt of an order confirming the
426 transfer of the guardianship to another jurisdiction.

427 Section 19. Section 744.91, Florida Statutes, is created to
428 read:

429 744.91 Accepting guardianship transferred from another
430 state.-

431 (1) Within 60 days after the residence of a ward of a
432 foreign guardian is moved to this state, the foreign guardian
433 appointed in another state shall file a petition to determine
434 incapacity and a petition to appoint a guardian with the clerk
435 of court in the county in which the ward resides. The petitions

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436 must include a certified copy of the other state's provisional
437 order of transfer, in addition to a certified copy of the
438 guardian's letters of guardianship or the equivalent.

439 (2) Notice of the petitions under subsection (1) must be
440 given to those persons who would be entitled to notice in this
441 state in the same manner as notice is required to be given in
442 this state and the respondent's home state.

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

445 (4) The court shall issue orders provisionally granting the
446 petitions unless:

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

450 (b) The guardian is ineligible for appointment in this
451 state.

452 (5) Until such time as a guardian is appointed in this
453 state for the ward or the ward is determined to not require a
454 guardian in this state, the foreign guardian's authority is
455 recognized and given full faith and credit in the courts of this
456 state, provided that the guardian is qualified to serve as the
457 guardian of the ward in this state. A foreign guardian who fails
458 to comply with the requirements of this section has no authority
459 to act on behalf of the ward in this state.

460 (6) After appointment of a guardian in this state, the
461 court may issue such orders as necessary to complete the
462 transfer of the foreign guardianship to this state or the
463 termination of the foreign guardianship, as may be required.

464 (7) The authority of the guardian of a nonresident ward

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465 shall be recognized and given full faith and credit in the
466 courts of this state. A guardian appointed in another state or
467 country may maintain or defend any action in this state as a
468 representative of the ward unless a guardian has been appointed
469 in this state.

470 Section 20. Section 744.92, Florida Statutes, is created to
471 read:

472 744.92 Registration of guardianship orders.—If a guardian
473 has been appointed in another state and a petition for the
474 appointment of a guardianship is not pending in this state, the
475 guardian appointed in the other state, after giving notice of
476 the appointment to the appointing court of the intent to
477 register, may register the guardianship order in this state by
478 filing it as a foreign judgment in a court of this state
479 pursuant to ss. 744.307 and 744.308.

480 Section 21. Section 744.93, Florida Statutes, is created to
481 read:

482 744.93 Effect of registration.—Upon registration of a
483 guardianship order from another state, the guardian or
484 conservator may exercise in this state all powers authorized in
485 the order of appointment except as prohibited under the laws of
486 this state and, if the guardian is not a resident of this state,
487 subject to any conditions imposed upon nonresident parties.

488 Section 22. Section 744.94, Florida Statutes, is created to
489 read:

490 744.94 Uniformity of application and construction.—In
491 applying and construing this part, consideration must be given
492 to the need to promote uniformity of the law with respect to its
493 subject matter among states that enact it.

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494 Section 23. Section 744.95, Florida Statutes, is created to
495 read:

496 744.95 Relation to federal Electronic Signatures in Global
497 and National Commerce Act.—This part modifies, limits, and
498 supersedes the federal Electronic Signatures in Global and
499 National Commerce Act, 15 U.S.C. s. 7001 et seq., but does not
500 modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s.
501 7001(c), or authorize electronic delivery of any of the notices
502 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

503 Section 24. Section 744.96, Florida Statutes, is created to
504 read:

505 744.96 Application.—This part applies to guardianship and
506 similar proceedings filed on or after July 1, 2022.

507 Section 25. This act shall take effect July 1, 2022.