

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

26 | connection with a particular state; creating s.  
27 | 744.82, F.S.; providing construction relating to the  
28 | basis for jurisdiction; creating s. 744.83, F.S.;  
29 | specifying circumstances when a court of this state  
30 | has jurisdiction in certain guardianship proceedings;  
31 | creating s. 744.84, F.S.; specifying the special  
32 | jurisdiction of courts of this state; providing  
33 | procedures relating to the appointment of an emergency  
34 | temporary guardian under certain circumstances;  
35 | creating s. 744.85, F.S.; providing that a court that  
36 | has appointed a guardian has exclusive and continuing  
37 | jurisdiction until certain conditions are met;  
38 | creating s. 744.86, F.S.; authorizing a court of this  
39 | state to decline to exercise its jurisdiction under  
40 | certain circumstances; specifying requirements for  
41 | such court; specifying factors a court must consider  
42 | in determining whether it is an appropriate forum;  
43 | creating s. 744.87, F.S.; authorizing a court to  
44 | decline to exercise jurisdiction or to exercise  
45 | jurisdiction for a limited purpose under certain  
46 | circumstances; authorizing a court to assess certain  
47 | expenses against certain persons; prohibiting the  
48 | court from assessing certain fees, costs, or expenses  
49 | against this state; creating s. 744.88, F.S.;  
50 | providing notice requirements for certain petitions to

51 | appoint a guardian; creating s. 744.89, F.S.;

52 | providing procedures when certain proceedings are

53 | pending in more than one state; creating s. 744.90,

54 | F.S.; authorizing a guardian appointed in this state

55 | to petition to transfer the guardianship to another

56 | state; providing notice requirements; providing

57 | requirements and procedures for the court; specifying

58 | conditions before a court issues a final order

59 | confirming the transfer and terminating the

60 | guardianship; providing a requirement for the guardian

61 | in filing a petition for discharge; creating s.

62 | 744.91, F.S.; specifying requirements and procedures

63 | for the transfer of a guardianship from another state;

64 | providing construction; creating s. 744.92, F.S.;

65 | providing a procedure for registering guardianship

66 | orders in this state under certain circumstances;

67 | creating s. 744.93, F.S.; providing construction

68 | relating to the effect of registering a guardianship

69 | order; creating s. 744.94, F.S.; providing

70 | construction relating to uniformity of law; creating

71 | s. 744.95, F.S.; providing construction relating to

72 | the federal Electronic Signatures in Global and

73 | National Commerce Act; creating s. 744.96, F.S.;

74 | providing applicability; providing an effective date.

75 |

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

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

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

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

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

87 744.75 Purpose; construction.—The purpose of this part is  
 88 to provide clear direction to the courts, attorneys, guardians,  
 89 and individuals about the proper jurisdiction for guardianship  
 90 proceedings. This part is intended to supplement, but not  
 91 replace, the current system for determining incapacity,  
 92 appointing guardians, managing estates, and other procedures as  
 93 governed by this chapter. The general purposes of this part are  
 94 to:

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

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

100 (3) Avoid relitigating the guardianship decisions of other

101 states in this state.

102 (4) Discourage the use of the interstate system for  
 103 continuing controversies over guardianship.

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

106 Section 4. Section 744.76, Florida Statutes, is created to  
 107 read:

108 744.76 Definitions.—As used in this part, the term:

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

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

116 (3) "Guardian" has the same meaning as in s. 744.102(9)  
 117 and includes a limited or plenary guardian or an emergency  
 118 temporary guardian as set forth in this chapter.

119 (4) "Guardianship order" means an order appointing a  
 120 guardian.

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

124 (6) "Home state" means the state in which the respondent  
 125 was physically present, including any period of temporary

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

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

138 (8) "Interested person" has the same meaning as in s.  
139 731.201.

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

144 (10) "Person," except when used in the terms  
145 "incapacitated person" or "interested person," includes  
146 individuals, children, firms, associations, joint adventures,  
147 partnerships, estates, trusts, business trusts, syndicates,  
148 fiduciaries, corporations, and all other groups or combinations  
149 thereof, as defined in s. 1.01(3).

150 (11) "Respondent" means an adult for whom the appointment

151 of a guardian is sought.

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

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

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

163 Section 5. Section 744.77, Florida Statutes, is created to  
 164 read:

165 744.77 International application of part.—A court of this  
 166 state shall treat a foreign country as if it were a state of the  
 167 United States for purposes of applying this part.

168 Section 6. Section 744.78, Florida Statutes, is created to  
 169 read:

170 744.78 Communication between courts.—

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

175 (2) Communications between courts may not occur without

176 the ability of interested persons to also participate in the  
 177 communication, either in person or by other means of  
 178 participation. Interested persons need not be a party to the  
 179 internal communications between the clerks of the various  
 180 courts.

181 Section 7. Section 744.79, Florida Statutes, is created to  
 182 read:

183 744.79 Cooperation between courts.-

184 (1) In a guardianship proceeding in this state, a court of  
 185 this state may request the appropriate court of another state to  
 186 do any of the following:

187 (a) Hold a hearing.

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

190 (c) Order that an evaluation or assessment be made of the  
 191 respondent.

192 (d) Order any appropriate investigation of a person  
 193 involved in a proceeding.

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

199 (f) Issue any order necessary to assure the appearance in  
 200 the proceeding of a person whose presence is necessary for the



201 court to make a determination, including the respondent or the  
 202 incapacitated person.

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

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

212 Section 8. Section 744.80, Florida Statutes, is created to  
 213 read:

214 744.80 Taking testimony in another state.—

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

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

223 Section 9. Section 744.81, Florida Statutes, is created to  
 224 read:

225 744.81 Significant-connection factors.—In determining

226 whether a respondent has a significant connection with a  
 227 particular state, the court shall consider the following:

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

230 (2) The length of time that the respondent was physically  
 231 present in the state at any point in time and the duration of  
 232 any absence.

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

234 (4) The extent to which the respondent has ties to the  
 235 state, such as voting registration, state or local tax return  
 236 filings, vehicle registration, driver license, social  
 237 relationships, and receipt of services.

238 Section 10. Section 744.82, Florida Statutes, is created  
 239 to read:

240 744.82 Exclusive basis for jurisdiction.—This part  
 241 provides the exclusive jurisdictional basis for a court of this  
 242 state to appoint a guardian for an adult.

243 Section 11. Section 744.83, Florida Statutes, is created  
 244 to read:

245 744.83 Jurisdiction.—A court of this state has  
 246 jurisdiction to determine incapacity, appoint a guardian, or  
 247 undertake similar proceedings if any of the following apply:

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

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

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

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

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

261 2. An objection to the jurisdiction of the court of this  
 262 state is not filed by a person required to be notified of the  
 263 proceeding; and

264 3. The court of this state concludes that it is the  
 265 appropriate forum after considering the factors set forth in s.  
 266 744.86.

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

273 (4) The requirements for special jurisdiction under s.  
 274 744.84 are met.

275 Section 12. Section 744.84, Florida Statutes, is created

276 to read:

277 744.84 Special jurisdiction.—

278 (1) A court of this state has jurisdiction to do the  
 279 following:

280 (a) In accordance with this chapter, appoint a temporary  
 281 guardian in an emergency for a respondent who is physically  
 282 present in this state.

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

286 (2) If a petition for the appointment of an emergency  
 287 temporary guardian is brought in this state and this state was  
 288 not the respondent's home state on the date that the petition  
 289 was filed, the court must dismiss the proceeding at the request  
 290 of the court of the home state, if any such request is made,  
 291 only after a hearing and judicial determination of the  
 292 appropriate forum of the respondent based on the factors in s.  
 293 744.86, whether by the home state or this state. If, after the  
 294 hearing, the home state and this state differ in their  
 295 determination of which is the appropriate forum, the home state  
 296 shall prevail, whether dismissal is requested before or after  
 297 the emergency appointment.

298 Section 13. Section 744.85, Florida Statutes, is created  
 299 to read:

300 744.85 Exclusive and continuing jurisdiction.—Except as

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

307 Section 14. Section 744.86, Florida Statutes, is created  
 308 to read:

309 744.86 Appropriate forum.—

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

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

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

322 (a) Any expressed preference of the respondent.

323 (b) Whether abuse, neglect, or exploitation of the  
 324 respondent has occurred or is likely to occur, and which state  
 325 could best protect the respondent from the abuse, neglect, or

326 exploitation.

327 (c) The length of time the respondent was physically  
 328 present in or was a legal resident of this or another state.

329 (d) The distance of the respondent from the court in each  
 330 state.

331 (e) The financial circumstances of the respondent's  
 332 estate.

333 (f) The nature and location of the evidence.

334 (g) The ability of the court in each state to decide the  
 335 issue expeditiously and the procedures necessary to present  
 336 evidence.

337 (h) The familiarity of the court of each state with the  
 338 facts and issues in the proceeding.

339 (i) If an appointment were made, the court's ability to  
 340 monitor the conduct of the guardian or conservator.

341 Section 15. Section 744.87, Florida Statutes, is created  
 342 to read:

343 744.87 Jurisdiction declined by reason of conduct.-

344 (1) If at any time a court of this state determines that  
 345 it acquired jurisdiction to appoint a guardian because a person  
 346 seeking to invoke its jurisdiction engaged in unjustifiable  
 347 conduct, the court may:

348 (a) Decline to exercise jurisdiction; or

349 (b) Exercise jurisdiction for the limited purpose of  
 350 fashioning an appropriate remedy to ensure the health, safety,

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351 and welfare of the respondent or protecting the respondent's  
352 property, or both, including staying the proceeding until a  
353 petition for the appointment of a guardian is filed in a court  
354 of another state having jurisdiction.

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

365 Section 16. Section 744.88, Florida Statutes, is created  
366 to read:

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

373 Section 17. Section 744.89, Florida Statutes, is created  
374 to read:

375 744.89 Proceedings in more than one state.—Except for a

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376 petition for the appointment of a guardian in an emergency, if a  
377 petition for the appointment of a guardian is filed in this  
378 state and in another state and neither petition has been  
379 dismissed or withdrawn, the following rules apply:

380 (1) If the court of this state has jurisdiction under this  
381 chapter, it may proceed with the case unless a court of another  
382 state acquires jurisdiction before the appointment of the  
383 guardian or issuance of the order.

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

394 Section 18. Section 744.90, Florida Statutes, is created  
395 to read:

396 744.90 Transfer of guardianship to another state.—

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

399 (2) Notice of a petition under subsection (1) must be  
400 given to all parties who would be entitled to notice of a



401 petition in this state for the appointment of a guardian or a  
402 petition for a change of residence of the ward.

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

406 (4) The court may issue an order provisionally granting a  
407 petition to transfer a guardianship and shall direct the  
408 guardian to petition for guardianship in the other state if the  
409 court is satisfied that the guardianship will likely be accepted  
410 by the court of the other state and the court finds that:

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

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

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

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

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

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

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

430       Section 19. Section 744.91, Florida Statutes, is created  
431 to read:

432       744.91 Accepting guardianship transferred from another  
433 state.-

434       (1) Within 60 days after the residence of a ward of a  
435 foreign guardian is moved to this state, the foreign guardian  
436 appointed in another state shall file a petition to determine  
437 incapacity and a petition to appoint a guardian with the clerk  
438 of court in the county in which the ward resides. The petitions  
439 must include a certified copy of the other state's provisional  
440 order of transfer, in addition to a certified copy of the  
441 guardian's letters of guardianship or the equivalent.

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

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

448       (4) The court shall issue orders provisionally granting  
449 the petitions unless:

450       (a) An objection is made and the objector establishes that

451 transfer of the proceeding would be contrary to the best  
 452 interests of the ward; or

453 (b) The guardian is ineligible for appointment in this  
 454 state.

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

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

467 (7) The authority of the guardian of a nonresident ward  
 468 shall be recognized and given full faith and credit in the  
 469 courts of this state. A guardian appointed in another state or  
 470 country may maintain or defend any action in this state as a  
 471 representative of the ward unless a guardian has been appointed  
 472 in this state.

473 Section 20. Section 744.92, Florida Statutes, is created  
 474 to read:

475 744.92 Registration of guardianship orders.—If a guardian

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476 has been appointed in another state and a petition for the  
477 appointment of a guardianship is not pending in this state, the  
478 guardian appointed in the other state, after giving notice of  
479 the appointing to the appointing court of the intent to  
480 register, may register the guardianship order in this state by  
481 filing it as a foreign judgment in a court of this state  
482 pursuant to ss. 744.307 and 744.308.

483 Section 21. Section 744.93, Florida Statutes, is created  
484 to read:

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

491 Section 22. Section 744.94, Florida Statutes, is created  
492 to read:

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

497 Section 23. Section 744.95, Florida Statutes, is created  
498 to read:

499 744.95 Relation to federal Electronic Signatures in Global  
500 and National Commerce Act.—This part modifies, limits, and

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501 supersedes the federal Electronic Signatures in Global and  
502 National Commerce Act, 15 U.S.C. s. 7001, et seq., but does not  
503 modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s.  
504 7001(c), or authorize electronic delivery of any of the notices  
505 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

506 Section 24. Section 744.96, Florida Statutes, is created  
507 to read:

508 744.96 Application.—This part applies to guardianship and  
509 similar proceedings filed on or after July 1, 2022.

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