

By: Truitt

H.B. No. 2260

A BILL TO BE ENTITLED

AN ACT

relating to adoption of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Part 5, Chapter XIII, Texas Probate Code, is amended by adding Subpart I to read as follows:

SUBPART I. UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

JURISDICTION ACT

ARTICLE 1. GENERAL PROVISIONS

Sec. 1001. SHORT TITLE. This subpart may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Sec. 1002. DEFINITIONS. In this subpart:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under Section 693 of this code.

(3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Section 693 of this code.

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

(5) "Guardianship proceeding" means a judicial

1 proceeding in which an order for the appointment of a guardian is
2 sought or has been issued.

3 (6) "Incapacitated person" means an adult for whom a
4 guardian has been appointed.

5 (7) "Party" means the respondent, petitioner,
6 guardian, conservator, or any other person allowed by the court to
7 participate in a guardianship or protective proceeding.

8 (8) "Person," except in the term incapacitated person
9 or protected person, means an individual, corporation, business
10 trust, estate, trust, partnership, limited liability company,
11 association, joint venture, public corporation, government or
12 governmental subdivision, agency, or instrumentality, or other
13 legal or commercial entity.

14 (9) "Protected person" means an adult for whom a
15 protective order has been issued.

16 (10) "Protective order" means an order appointing a
17 conservator or other order related to management of an adult's
18 property.

19 (11) "Protective proceeding" means a judicial
20 proceeding in which a protective order is sought or has been issued.

21 (12) "Record" means information that is inscribed on a
22 tangible medium or that is stored in an electronic or other medium
23 and is retrievable in perceivable form.

24 (13) "Respondent" means an adult for whom a protective
25 order or the appointment of a guardian is sought.

26 (14) "State" means a state of the United States, the
27 District of Columbia, Puerto Rico, the United States Virgin

1 Islands, a federally recognized Indian tribe, or any territory or
2 insular possession subject to the jurisdiction of the United
3 States.

4 Sec. 1003. INTERNATIONAL APPLICATION OF SUBPART. A court of
5 this state may treat a foreign country as if it were a state for the
6 purpose of applying this article and Articles 2, 3, and 5 of this
7 subpart.

8 Sec. 1004. COMMUNICATION BETWEEN COURTS. (a) A court of
9 this state may communicate with a court in another state concerning
10 a proceeding arising under this subpart. The court may allow the
11 parties to participate in the communication. Except as otherwise
12 provided in Subsection (b) of this section, the court shall make a
13 record of the communication. The record may be limited to the fact
14 that the communication occurred.

15 (b) Courts may communicate concerning schedules, calendars,
16 court records, and other administrative matters without making a
17 record.

18 Sec. 1005. COOPERATION BETWEEN COURTS. (a) In a
19 guardianship or protective proceeding in this state, a court of
20 this state may request the appropriate court of another state to do
21 any of the following:

22 (1) hold an evidentiary hearing;

23 (2) order a person in that state to produce evidence or
24 give testimony pursuant to procedures of that state;

25 (3) order that an evaluation or assessment be made of
26 the respondent;

27 (4) order any appropriate investigation of a person

1 involved in a proceeding;

2 (5) forward to the court of this state a certified copy
3 of the transcript or other record of a hearing under Subdivision (1)
4 of this subsection or any other proceeding, any evidence otherwise
5 produced under Subdivision (2) of this subsection, and any
6 evaluation or assessment prepared in compliance with an order under
7 Subdivision (3) or (4) of this subsection;

8 (6) issue any order necessary to assure the appearance
9 in the proceeding of a person whose presence is necessary for the
10 court to make a determination, including the respondent or the
11 incapacitated or protected person; or

12 (7) issue an order authorizing the release of medical,
13 financial, criminal, or other relevant information in that state,
14 including protected health information as defined in 45 C.F.R.
15 Section 164.504.

16 (b) If a court of another state in which a guardianship or
17 protective proceeding is pending requests assistance of the kind
18 provided in Subsection (a) of this section, a court of this state
19 has jurisdiction for the limited purpose of granting the request or
20 making reasonable efforts to comply with the request.

21 Sec. 1006. TAKING TESTIMONY IN ANOTHER STATE. (a) In a
22 guardianship or protective proceeding, in addition to other
23 procedures that may be available, testimony of a witness who is
24 located in another state may be offered by deposition or other means
25 allowable in this state for testimony taken in another state. The
26 court on its own motion may order that the testimony of a witness be
27 taken in another state and may prescribe the manner in which and the

1 terms on which the testimony is to be taken.

2 (b) In a guardianship or protective proceeding, a court in
3 this state may permit a witness located in another state to be
4 deposed or to testify by telephone or audiovisual or other
5 electronic means. A court of this state shall cooperate with the
6 court of the other state in designating an appropriate location for
7 the deposition or testimony.

8 (c) Documentary evidence transmitted from another state to
9 a court of this state by technological means that do not produce an
10 original writing may not be excluded from evidence on an objection
11 based on the best evidence rule.

12 ARTICLE 2. JURISDICTION

13 Sec. 1051. DEFINITIONS; SIGNIFICANT CONNECTION FACTORS.

14 (a) In this article:

15 (1) "Emergency" means a circumstance that likely will
16 result in substantial harm to a respondent's health, safety, or
17 welfare, and for which the appointment of a guardian is necessary
18 because no other person has authority and is willing to act on the
19 respondent's behalf.

20 (2) "Home state" means the state in which the
21 respondent was physically present, including any period of
22 temporary absence, for at least six consecutive months immediately
23 before the filing of a petition for a protective order or the
24 appointment of a guardian; or if none, the state in which the
25 respondent was physically present, including any period of
26 temporary absence, for at least six consecutive months ending
27 within the six months prior to the filing of the petition.

1 (3) "Significant-connection state" means a state,
2 other than the home state, with which a respondent has a significant
3 connection other than mere physical presence and in which
4 substantial evidence concerning the respondent is available.

5 (b) In determining under Sections 1053 and 1101(e) of this
6 code whether a respondent has a significant connection with a
7 particular state, the court shall consider:

8 (1) the location of the respondent's family and other
9 persons required to be notified of the guardianship or protective
10 proceeding;

11 (2) the length of time the respondent at any time was
12 physically present in the state and the duration of any absence;

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

14 (4) the extent to which the respondent has ties to the
15 state such as voting registration, state or local tax return
16 filing, vehicle registration, driver's license, social
17 relationship, and receipt of services.

18 Sec. 1052. EXCLUSIVE BASIS. This article provides the
19 exclusive jurisdictional basis for a court of this state to appoint
20 a guardian or issue a protective order for an adult.

21 Sec. 1053. JURISDICTION. A court of this state has
22 jurisdiction to appoint a guardian or issue a protective order for a
23 respondent if:

24 (1) this state is the respondent's home state;

25 (2) on the date the petition is filed, this state is a
26 significant-connection state and:

27 (A) the respondent does not have a home state or a

1 court of the respondent's home state has declined to exercise
2 jurisdiction because this state is a more appropriate forum; or

3 (B) the respondent has a home state, a petition
4 for an appointment or order is not pending in a court of that state
5 or another significant-connection state, and, before the court
6 makes the appointment or issues the order:

7 (i) a petition for an appointment or order
8 is not filed in the respondent's home state;

9 (ii) an objection to the court's
10 jurisdiction is not filed by a person required to be notified of the
11 proceeding; and

12 (iii) the court in this state concludes
13 that it is an appropriate forum under the factors set forth in
14 Section 1056 of this code;

15 (3) this state does not have jurisdiction under either
16 Subdivision (1) or (2) of this section, the respondent's home state
17 and all significant-connection states have declined to exercise
18 jurisdiction because this state is the more appropriate forum, and
19 jurisdiction in this state is consistent with a provision of the
20 Texas Constitution or the United States Constitution; or

21 (4) the requirements for special jurisdiction under
22 Section 1054 of this code are met.

23 Sec. 1054. SPECIAL JURISDICTION. (a) A court of this state
24 lacking jurisdiction under Section 1053(1), (2), or (3) of this
25 code has special jurisdiction to do any of the following:

26 (1) appoint a guardian in an emergency for a term not
27 to exceed 90 days for a respondent who is physically present in this

1 state;

2 (2) issue a protective order with respect to real or
3 tangible personal property located in this state; or

4 (3) appoint a guardian or conservator for an
5 incapacitated or protected person for whom a provisional order to
6 transfer the proceeding from another state has been issued under
7 procedures similar to Section 1101 of this code.

8 (b) If a petition for the appointment of a guardian in an
9 emergency is brought in this state and this state was not the
10 respondent's home state on the date the petition was filed, the
11 court shall dismiss the proceeding at the request of the court of
12 the home state, if any, whether dismissal is requested before or
13 after the emergency appointment.

14 Sec. 1055. EXCLUSIVE AND CONTINUING JURISDICTION. Except
15 as otherwise provided in Section 1054 of this code, a court that has
16 appointed a guardian or issued a protective order consistent with
17 this subpart has exclusive and continuing jurisdiction over the
18 proceeding until it is terminated by the court or the appointment or
19 order expires by its own terms.

20 Sec. 1056. APPROPRIATE FORUM. (a) A court of this state
21 having jurisdiction under Section 1053 of this code to appoint a
22 guardian or issue a protective order may decline to exercise its
23 jurisdiction if it determines at any time that a court of another
24 state is a more appropriate forum.

25 (b) If a court of this state declines to exercise its
26 jurisdiction under Subsection (a) of this section, it shall either
27 dismiss or stay the proceeding. The court may impose any condition

1 the court considers just and proper, including the condition that a
2 petition for the appointment of a guardian or issuance of a
3 protective order be filed promptly in another state.

4 (c) In determining whether it is an appropriate forum, the
5 court shall consider all relevant factors, including:

6 (1) any expressed preference of the respondent;

7 (2) whether abuse, neglect, or exploitation of the
8 respondent has occurred or is likely to occur and which state could
9 best protect the respondent from the abuse, neglect, or
10 exploitation;

11 (3) the length of time the respondent was physically
12 present in or was a legal resident of this or another state;

13 (4) the distance of the respondent from the court in
14 each state;

15 (5) the financial circumstances of the respondent's
16 estate;

17 (6) the nature and location of the evidence;

18 (7) the ability of the court in each state to decide
19 the issue expeditiously and the procedures necessary to present
20 evidence;

21 (8) the familiarity of the court of each state with the
22 facts and issues in the proceeding; and

23 (9) if an appointment were made, the court's ability to
24 monitor the conduct of the guardian or conservator.

25 Sec. 1057. JURISDICTION DECLINED BY REASON OF CONDUCT. (a)
26 If at any time a court of this state determines that it acquired
27 jurisdiction to appoint a guardian or issue a protective order

1 because of unjustifiable conduct, the court may:

2 (1) decline to exercise jurisdiction;

3 (2) exercise jurisdiction for the limited purpose of
4 fashioning an appropriate remedy to ensure the health, safety, and
5 welfare of the respondent or the protection of the respondent's
6 property or prevent a repetition of the unjustifiable conduct,
7 including staying the proceeding until a petition for the
8 appointment of a guardian or issuance of a protective order is filed
9 in a court of another state having jurisdiction; or

10 (3) continue to exercise jurisdiction after
11 considering:

12 (A) the extent to which the respondent and all
13 persons required to be notified of the proceedings have acquiesced
14 in the exercise of the court's jurisdiction;

15 (B) whether it is a more appropriate forum than
16 the court of any other state under the factors set forth in Section
17 1056(c) of this code; and

18 (C) whether the court of any other state would
19 have jurisdiction under factual circumstances in substantial
20 conformity with the jurisdictional standards of Section 1053 of
21 this code.

22 (b) If a court of this state determines that it acquired
23 jurisdiction to appoint a guardian or issue a protective order
24 because a party seeking to invoke its jurisdiction engaged in
25 unjustifiable conduct, it may assess against that party necessary
26 and reasonable expenses, including attorney's fees, investigative
27 fees, court costs, communication expenses, witness fees and

1 expenses, and travel expenses. The court may not assess fees,
2 costs, or expenses of any kind against this state or a governmental
3 subdivision, agency, or instrumentality of this state unless
4 authorized by law other than this subpart.

5 Sec. 1058. NOTICE OF PROCEEDING. If a petition for the
6 appointment of a guardian or issuance of a protective order is
7 brought in this state and this state was not the respondent's home
8 state on the date the petition was filed, in addition to complying
9 with the notice requirements of this state, notice of the petition
10 must be given to those persons who would be entitled to notice of
11 the petition if a proceeding were brought in the respondent's home
12 state. The notice must be given in the same manner as notice is
13 required to be given in this state.

14 Sec. 1059. PROCEEDINGS IN MORE THAN ONE STATE. Except for a
15 petition for the appointment of a guardian in an emergency or
16 issuance of a protective order limited to property located in this
17 state under Section 1054(a)(1) or (2) of this code, if a petition
18 for the appointment of a guardian or issuance of a protective order
19 is filed in this state and in another state and neither petition has
20 been dismissed or withdrawn, the following rules apply:

21 (1) If the court in this state has jurisdiction under
22 Section 1053 of this code, it may proceed with the case unless a
23 court in another state acquires jurisdiction under provisions
24 similar to Section 1053 of this code before the appointment or
25 issuance of the order.

26 (2) If the court in this state does not have
27 jurisdiction under Section 1053 of this code, whether at the time

1 the petition is filed or at any time before the appointment or
2 issuance of the order, the court shall stay the proceeding and
3 communicate with the court in the other state. If the court in the
4 other state has jurisdiction, the court in this state shall dismiss
5 the petition unless the court in the other state determines that the
6 court in this state is a more appropriate forum.

7 ARTICLE 3. TRANSFER OF GUARDIANSHIP OR
8 CONSERVATORSHIP

9 Sec. 1101. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO
10 ANOTHER STATE. (a) A guardian or conservator appointed in this
11 state may petition the court to transfer the guardianship or
12 conservatorship to another state.

13 (b) Notice of a petition under Subsection (a) of this
14 section must be given to the persons that would be entitled to
15 notice of a petition in this state for the appointment of a guardian
16 or conservator.

17 (c) On the court's own motion or on request of the guardian
18 or conservator, the incapacitated or protected person, or another
19 person required to be notified of the petition, the court shall hold
20 a hearing on a petition filed pursuant to Subsection (a) of this
21 section.

22 (d) The court shall issue an order provisionally granting a
23 petition to transfer a guardianship and shall direct the guardian
24 to petition for guardianship in the other state if the court is
25 satisfied that the guardianship will be accepted by the court in the
26 other state and the court finds that:

27 (1) the incapacitated person is physically present in

1 or is reasonably expected to move permanently to the other state;

2 (2) an objection to the transfer has not been made or,
3 if an objection has been made, the objector has not established that
4 the transfer would be contrary to the interests of the
5 incapacitated person; and

6 (3) plans for care and services for the incapacitated
7 person in the other state are reasonable and sufficient.

8 (e) The court shall issue a provisional order granting a
9 petition to transfer a conservatorship and shall direct the
10 conservator to petition for conservatorship in the other state if
11 the court is satisfied that the conservatorship will be accepted by
12 the court of the other state and the court finds that:

13 (1) the protected person is physically present in or
14 is reasonably expected to move permanently to the other state, or
15 the protected person has a significant connection to the other
16 state considering the factors in Section 1051(b) of this code;

17 (2) an objection to the transfer has not been made or,
18 if an objection has been made, the objector has not established that
19 the transfer would be contrary to the interests of the protected
20 person; and

21 (3) adequate arrangements will be made for management
22 of the protected person's property.

23 (f) The court shall issue a final order confirming the
24 transfer and terminating the guardianship or conservatorship upon
25 its receipt of:

26 (1) a provisional order accepting the proceeding from
27 the court to which the proceeding is to be transferred which is

1 issued under provisions similar to Section 1102 of this code; and

2 (2) the documents required to terminate a guardianship
3 or conservatorship in this state.

4 Sec. 1102. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP
5 TRANSFERRED FROM ANOTHER STATE. (a) To confirm transfer of a
6 guardianship or conservatorship transferred to this state under
7 provisions similar to Section 1101 of this code, the guardian or
8 conservator must petition the court in this state to accept the
9 guardianship or conservatorship. The petition must include a
10 certified copy of the other state's provisional order of transfer.

11 (b) Notice of a petition under Subsection (a) of this
12 section must be given to those persons that would be entitled to
13 notice if the petition were a petition for the appointment of a
14 guardian or issuance of a protective order in both the transferring
15 state and this state. The notice must be given in the same manner as
16 notice is required to be given in this state.

17 (c) On the court's own motion or on request of the guardian
18 or conservator, the incapacitated or protected person, or another
19 person required to be notified of the proceeding, the court shall
20 hold a hearing on a petition filed pursuant to Subsection (a) of
21 this section.

22 (d) The court shall issue an order provisionally granting a
23 petition filed under Subsection (a) of this section unless:

24 (1) an objection is made and the objector establishes
25 that transfer of the proceeding would be contrary to the interests
26 of the incapacitated or protected person; or

27 (2) the guardian or conservator is ineligible for

1 appointment in this state.

2 (e) The court shall issue a final order accepting the
3 proceeding and appointing the guardian or conservator as guardian
4 or conservator in this state on its receipt from the court from
5 which the proceeding is being transferred of a final order issued
6 under provisions similar to Section 1101 of this code transferring
7 the proceeding to this state.

8 (f) Not later than 90 days after issuance of a final order
9 accepting transfer of a guardianship or conservatorship, the court
10 shall determine whether the guardianship or conservatorship needs
11 to be modified to conform to the law of this state.

12 (g) In granting a petition under this section, the court
13 shall recognize a guardianship or conservatorship order from the
14 other state, including the determination of the incapacitated or
15 protected person's incapacity and the appointment of the guardian
16 or conservator.

17 (h) The denial by a court of this state of a petition to
18 accept a guardianship or conservatorship transferred from another
19 state does not affect the ability of the guardian or conservator to
20 seek appointment as guardian or conservator in this state under
21 Section 682 of this code if the court has jurisdiction to make an
22 appointment other than by reason of the provisional order of
23 transfer.

24 ARTICLE 4. REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

25 Sec. 1151. REGISTRATION OF GUARDIANSHIP ORDERS. If a
26 guardian has been appointed in another state and a petition for the
27 appointment of a guardian is not pending in this state, the guardian

1 appointed in the other state, after giving notice to the appointing
2 court of an intent to register, may register the guardianship order
3 in this state by filing as a foreign judgment in a court, in any
4 appropriate county of this state, certified copies of the order and
5 letters of office.

6 Sec. 1152. REGISTRATION OF PROTECTIVE ORDERS. If a
7 conservator has been appointed in another state and a petition for a
8 protective order is not pending in this state, the conservator
9 appointed in the other state, after giving notice to the appointing
10 court of an intent to register, may register the protective order in
11 this state by filing as a foreign judgment in a court of this state,
12 in any county in which property belonging to the protected person is
13 located, certified copies of the order and letters of office and of
14 any bond.

15 Sec. 1153. EFFECT OF REGISTRATION. (a) On registration of a
16 guardianship or protective order from another state, the guardian
17 or conservator may exercise in this state all powers authorized in
18 the order of appointment except as prohibited under the laws of this
19 state, including maintaining actions and proceedings in this state
20 and, if the guardian or conservator is not a resident of this state,
21 subject to any conditions imposed on nonresident parties.

22 (b) A court of this state may grant any relief available
23 under this subpart and other laws of this state to enforce a
24 registered order.

25 ARTICLE 5. MISCELLANEOUS PROVISIONS

26 Sec. 1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In
27 applying and construing this subpart, consideration must be given

1 to the need to promote uniformity of the law with respect to the
2 subject matter of this subpart among states that enact a law
3 substantially similar to this subpart.

4 Sec. 1202. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
5 NATIONAL COMMERCE ACT. This subpart modifies, limits, and
6 supersedes the federal Electronic Signatures in Global and National
7 Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify,
8 limit, or supersede Section 101(c) of that Act (15 U.S.C. Section
9 7001(c)) or authorize electronic delivery of any of the notices
10 described in Section 103(b) of that Act (15 U.S.C. Section
11 7003(b)).

12 SECTION 2. (a) Subpart I, Part 5, Chapter XIII, Texas
13 Probate Code, as added by this Act, applies to guardianship and
14 protective proceedings instituted on or after the effective date of
15 this Act.

16 (b) Articles 1, 3, 4, and 5, Subpart I, Part 5, Chapter XIII,
17 Texas Probate Code, as added by this Act, apply to proceedings
18 instituted before the effective date of this Act, regardless of
19 whether a guardianship or protective order has been issued by a
20 court.

21 SECTION 3. This Act takes effect September 1, 2009.