



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1930

Introduced 2/20/2009, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

New Act

Creates the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. Contains provisions concerning jurisdiction over adult guardianships, conservatorships, and other protective proceedings. Sets forth guidelines to specify which court has jurisdiction to appoint a guardian or conservator for an incapacitated adult, by prioritizing the states which might claim jurisdiction. Provides for designation of a "home state" and a "significant-connection state". Provides for communication and cooperation between courts. Contains provisions concerning transfer of guardianship or conservatorship to another state. Provides for registration and recognition of guardianship or protective orders from other states.

LRB096 11261 DRJ 21677 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Article 1. General Provisions

5 Section 101. Short title. This Act may be cited as the
6 Uniform Adult Guardianship and Protective Proceedings
7 Jurisdiction Act.

8 Section 102. Definitions. In this Act:

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

11 (2) "Conservator" means a person appointed by the court to
12 administer the property of an adult, including a person
13 appointed under the Probate Act of 1975.

14 (3) "Guardian" means a person appointed by the court to
15 make decisions regarding the person of an adult, including a
16 person appointed under the Probate Act of 1975.

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

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

22 (6) "Incapacitated person" means an adult for whom a

1 guardian has been appointed.

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

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

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

13 (10) "Protective order" means an order appointing a
14 conservator or other order related to management of an adult's
15 property.

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

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

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

23 (14) "State" means a state of the United States, the
24 District of Columbia, Puerto Rico, the United States Virgin
25 Islands, a federally recognized Indian tribe, or any territory
26 or insular possession subject to the jurisdiction of the United

1 States.

2 Section 103. International application of Act. A court of
3 this state may treat a foreign country as if it were a state
4 for the purpose of applying this Article and Articles 2, 3, and
5 5.

6 Section 104. Communication between courts.

7 (a) A court of this state may communicate with a court in
8 another state concerning a proceeding arising under this Act.
9 The court may allow the parties to participate in the
10 communication. Except as otherwise provided in subsection (b),
11 the court shall make a record of the communication. The record
12 may be limited to the fact that the communication occurred.

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

16 Section 105. Cooperation between courts.

17 (a) In a guardianship or protective proceeding in this
18 state, a court of this state may request the appropriate court
19 of another state to do any of the following:

20 (1) hold an evidentiary hearing;

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

23 (3) order that an evaluation or assessment be made of

1 the respondent;

2 (4) order any appropriate investigation of a person
3 involved in a proceeding;

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

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

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

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

23 Section 106. Taking testimony in another state.

24 (a) In a guardianship or protective proceeding, in addition
25 to other procedures that may be available, testimony of a

1 witness who is located in another state may be offered by
2 deposition or other means allowable in this state for testimony
3 taken in another state. The court on its own motion may order
4 that the testimony of a witness be taken in another state and
5 may prescribe the manner in which and the terms upon which the
6 testimony is to be taken.

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

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

17 Article 2. Jurisdiction

18 Section 201. Definitions; significant connection factors.

19 (a) In this Article:

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

1 (2) "Home state" means the state in which the
2 respondent was physically present, including any period of
3 temporary absence, for at least six consecutive months
4 immediately before the filing of a petition for a
5 protective order or the appointment of a guardian; or if
6 none, the state in which the respondent was physically
7 present, including any period of temporary absence, for at
8 least six consecutive months ending within the six months
9 prior to the filing of the petition.

10 (3) "Significant-connection state" means a state,
11 other than the home state, with which a respondent has a
12 significant connection other than mere physical presence
13 and in which substantial evidence concerning the
14 respondent is available.

15 (b) In determining under Section 203 and Section 301(e)
16 whether a respondent has a significant connection with a
17 particular state, the court shall consider:

18 (1) the location of the respondent's family and other
19 persons required to be notified of the guardianship or
20 protective proceeding;

21 (2) the length of time the respondent at any time was
22 physically present in the state and the duration of any
23 absence;

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

25 (4) the extent to which the respondent has ties to the
26 state such as voting registration, state or local tax

1 return filing, vehicle registration, driver's license,
2 social relationship, and receipt of services.

3 Section 202. Exclusive basis. This Article provides the
4 exclusive jurisdictional basis for a court of this state to
5 appoint a guardian or issue a protective order for an adult.

6 Section 203. Jurisdiction. A court of this state has
7 jurisdiction to appoint a guardian or issue a protective order
8 for a respondent if:

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

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

12 (A) the respondent does not have a home state or a
13 court of the respondent's home state has declined to
14 exercise jurisdiction because this state is a more
15 appropriate forum; or

16 (B) the respondent has a home state, a petition for
17 an appointment or order is not pending in a court of
18 that state or another significant-connection state,
19 and, before the court makes the appointment or issues
20 the order:

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

23 (ii) an objection to the court's jurisdiction
24 is not filed by a person required to be notified of

1 the proceeding; and

2 (iii) the court in this state concludes that it
3 is an appropriate forum under the factors set forth
4 in Section 206;

5 (3) this state does not have jurisdiction under either
6 paragraph (1) or (2), the respondent's home state and all
7 significant-connection states have declined to exercise
8 jurisdiction because this state is the more appropriate
9 forum, and jurisdiction in this state is consistent with
10 the constitutions of this state and the United States; or

11 (4) the requirements for special jurisdiction under
12 Section 204 are met.

13 Section 204. Special jurisdiction.

14 (a) A court of this state lacking jurisdiction under
15 Section 203(1) through (3) has special jurisdiction to do any
16 of the following:

17 (1) appoint a guardian in an emergency for a term not
18 exceeding 90 days for a respondent who is physically
19 present in this state;

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

22 (3) appoint a guardian or conservator for an
23 incapacitated or protected person for whom a provisional
24 order to transfer the proceeding from another state has
25 been issued under procedures similar to Section 301.

1 (b) If a petition for the appointment of a guardian in an
2 emergency is brought in this state and this state was not the
3 respondent's home state on the date the petition was filed, the
4 court shall dismiss the proceeding at the request of the court
5 of the home state, if any, whether dismissal is requested
6 before or after the emergency appointment.

7 Section 205. Exclusive and continuing jurisdiction. Except
8 as otherwise provided in Section 204, a court that has
9 appointed a guardian or issued a protective order consistent
10 with this Act has exclusive and continuing jurisdiction over
11 the proceeding until it is terminated by the court or the
12 appointment or order expires by its own terms.

13 Section 206. Appropriate forum.

14 (a) A court of this state having jurisdiction under Section
15 203 to appoint a guardian or issue a protective order may
16 decline to exercise its jurisdiction if it determines at any
17 time that a court of another state is a more appropriate forum.

18 (b) If a court of this state declines to exercise its
19 jurisdiction under subsection (a), it shall either dismiss or
20 stay the proceeding. The court may impose any condition the
21 court considers just and proper, including the condition that a
22 petition for the appointment of a guardian or issuance of a
23 protective order be filed promptly in another state.

24 (c) In determining whether it is an appropriate forum, the

1 court shall consider all relevant factors, including:

2 (1) any expressed preference of the respondent;

3 (2) whether abuse, neglect, or exploitation of the
4 respondent has occurred or is likely to occur and which
5 state could best protect the respondent from the abuse,
6 neglect, or exploitation;

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

10 (4) the distance of the respondent from the court in
11 each state;

12 (5) the financial circumstances of the respondent's
13 estate;

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

15 (7) the ability of the court in each state to decide
16 the issue expeditiously and the procedures necessary to
17 present evidence;

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

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

22 Section 207. Jurisdiction declined by reason of conduct.

23 (a) If at any time a court of this state determines that it
24 acquired jurisdiction to appoint a guardian or issue a
25 protective order because of unjustifiable conduct, the court

1 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,
5 safety, and welfare of the respondent or the protection of
6 the respondent's property or prevent a repetition of the
7 unjustifiable conduct, including staying the proceeding
8 until a petition for the appointment of a guardian or
9 issuance of a protective order is filed in a court of
10 another state having jurisdiction; or

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

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

17 (B) whether it is a more appropriate forum than the
18 court of any other state under the factors set forth in
19 Section 206(c); and

20 (C) whether the court of any other state would have
21 jurisdiction under factual circumstances in
22 substantial conformity with the jurisdictional
23 standards of Section 203.

24 (b) If a court of this state determines that it acquired
25 jurisdiction to appoint a guardian or issue a protective order
26 because a party seeking to invoke its jurisdiction engaged in

1 unjustifiable conduct, it may assess against that party
2 necessary and reasonable expenses, including attorney's fees,
3 investigative fees, court costs, communication expenses,
4 witness fees and expenses, and travel expenses. The court may
5 not assess fees, costs, or expenses of any kind against this
6 state or a governmental subdivision, agency, or
7 instrumentality of this state unless authorized by law other
8 than this Act.

9 Section 208. Notice of proceeding. If a petition for the
10 appointment of a guardian or issuance of a protective order is
11 brought in this state and this state was not the respondent's
12 home state on the date the petition was filed, in addition to
13 complying with the notice requirements of this state, notice of
14 the petition must be given to those persons who would be
15 entitled to notice of the petition if a proceeding were brought
16 in the respondent's home state. The notice must be given in the
17 same manner as notice is required to be given in this state.

18 Section 209. Proceedings in more than one state. Except for
19 a petition for the appointment of a guardian in an emergency or
20 issuance of a protective order limited to property located in
21 this state under Section 204(a)(1) or (a)(2), if a petition for
22 the appointment of a guardian or issuance of a protective order
23 is filed in this state and in another state and neither
24 petition has been dismissed or withdrawn, the following rules

1 apply:

2 (1) If the court in this state has jurisdiction under
3 Section 203, it may proceed with the case unless a court in
4 another state acquires jurisdiction under provisions
5 similar to Section 203 before the appointment or issuance
6 of the order.

7 (2) If the court in this state does not have
8 jurisdiction under Section 203, whether at the time the
9 petition is filed or at any time before the appointment or
10 issuance of the order, the court shall stay the proceeding
11 and communicate with the court in the other state. If the
12 court in the other state has jurisdiction, the court in
13 this state shall dismiss the petition unless the court in
14 the other state determines that the court in this state is
15 a more appropriate forum.

16 Article 3. Transfer of Guardianship or Conservatorship

17 Section 301. Transfer of guardianship or conservatorship
18 to another state.

19 (a) A guardian or conservator appointed in this state may
20 petition the court to transfer the guardianship or
21 conservatorship to another state.

22 (b) Notice of a petition under subsection (a) must be given
23 to the persons that would be entitled to notice of a petition
24 in this state for the appointment of a guardian or conservator.

1 (c) On the court's own motion or on request of the guardian
2 or conservator, the incapacitated or protected person, or other
3 person required to be notified of the petition, the court shall
4 hold a hearing on a petition filed pursuant to subsection (a).

5 (d) The court shall issue an order provisionally granting a
6 petition to transfer a guardianship and shall direct the
7 guardian to petition for guardianship in the other state if the
8 court is satisfied that the guardianship will be accepted by
9 the court in the other state and the court finds that:

10 (1) the incapacitated person is physically present in
11 or is reasonably expected to move permanently to the other
12 state;

13 (2) an objection to the transfer has not been made or,
14 if an objection has been made, the objector has not
15 established that the transfer would be contrary to the
16 interests of the incapacitated person; and

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

19 (e) The court shall issue a provisional order granting a
20 petition to transfer a conservatorship and shall direct the
21 conservator to petition for conservatorship in the other state
22 if the court is satisfied that the conservatorship will be
23 accepted by the court of the other state and the court finds
24 that:

25 (1) the protected person is physically present in or is
26 reasonably expected to move permanently to the other state,

1 or the protected person has a significant connection to the
2 other state considering the factors in Section 201(b);

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

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

9 (f) The court shall issue a final order confirming the
10 transfer and terminating the guardianship or conservatorship
11 upon its receipt of:

12 (1) a provisional order accepting the proceeding from
13 the court to which the proceeding is to be transferred
14 which is issued under provisions similar to Section 302;
15 and

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

18 Section 302. Accepting guardianship or conservatorship
19 transferred from another state.

20 (a) To confirm transfer of a guardianship or
21 conservatorship transferred to this state under provisions
22 similar to Section 301, the guardian or conservator must
23 petition the court in this state to accept the guardianship or
24 conservatorship. The petition must include a certified copy of
25 the other state's provisional order of transfer.

1 (b) Notice of a petition under subsection (a) must be given
2 to those persons that would be entitled to notice if the
3 petition were a petition for the appointment of a guardian or
4 issuance of a protective order in both the transferring state
5 and this state. The notice must be given in the same manner as
6 notice is required to be given in this state.

7 (c) On the court's own motion or on request of the guardian
8 or conservator, the incapacitated or protected person, or other
9 person required to be notified of the proceeding, the court
10 shall hold a hearing on a petition filed pursuant to subsection
11 (a).

12 (d) The court shall issue an order provisionally granting a
13 petition filed under subsection (a) unless:

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

17 (2) the guardian or conservator is ineligible for
18 appointment in this state.

19 (e) The court shall issue a final order accepting the
20 proceeding and appointing the guardian or conservator as
21 guardian or conservator in this state upon its receipt from the
22 court from which the proceeding is being transferred of a final
23 order issued under provisions similar to Section 301
24 transferring the proceeding to this state.

25 (f) Not later than 90 days after issuance of a final order
26 accepting transfer of a guardianship or conservatorship, the

1 court shall determine whether the guardianship or
2 conservatorship needs to be modified to conform to the law of
3 this state.

4 (g) In granting a petition under this Section, the court
5 shall recognize a guardianship or conservatorship order from
6 the other state, including the determination of the
7 incapacitated or protected person's incapacity and the
8 appointment of the guardian or conservator.

9 (h) The denial by a court of this state of a petition to
10 accept a guardianship or conservatorship transferred from
11 another state does not affect the ability of the guardian or
12 conservator to seek appointment as guardian or conservator in
13 this state under the Probate Act of 1975 if the court has
14 jurisdiction to make an appointment other than by reason of the
15 provisional order of transfer.

16 Article 4. Registration and Recognition of Orders From Other
17 States

18 Section 401. Registration of guardianship orders. If a
19 guardian has been appointed in another state and a petition for
20 the appointment of a guardian is not pending in this state, the
21 guardian appointed in the other state, after giving notice to
22 the appointing court of an intent to register, may register the
23 guardianship order in this state by filing as a foreign
24 judgment in a court, in any appropriate county of this state,

1 certified copies of the order and letters of office.

2 Section 402. Registration of protective orders. If a
3 conservator has been appointed in another state and a petition
4 for a protective order is not pending in this state, the
5 conservator appointed in the other state, after giving notice
6 to the appointing court of an intent to register, may register
7 the protective order in this state by filing as a foreign
8 judgment in a court of this state, in any county in which
9 property belonging to the protected person is located,
10 certified copies of the order and letters of office and of any
11 bond.

12 Section 403. Effect of registration.

13 (a) Upon registration of a guardianship or protective order
14 from another state, the guardian or conservator may exercise in
15 this state all powers authorized in the order of appointment
16 except as prohibited under the laws of this state, including
17 maintaining actions and proceedings in this state and, if the
18 guardian or conservator is not a resident of this state,
19 subject to any conditions imposed upon nonresident parties.

20 (b) A court of this state may grant any relief available
21 under this Act and other law of this state to enforce a
22 registered order.

23 Article 5. Miscellaneous Provisions

1 Section 501. Uniformity of application and construction.
2 In applying and construing this uniform Act, consideration must
3 be given to the need to promote uniformity of the law with
4 respect to its subject matter among states that enact it.

5 Section 502. Relation to Electronic Signatures in Global
6 and National Commerce Act. This Act modifies, limits, and
7 supersedes the federal Electronic Signatures in Global and
8 National Commerce Act, 15 U.S.C. Section 7001, et seq., but
9 does not modify, limit, or supersede Section 101(c) of that
10 Act, 15 U.S.C. Section 7001(c), or authorize electronic
11 delivery of any of the notices described in Section 103(b) of
12 that Act, 15 U.S.C. Section 7003(b).

13 Section 503. Repeals. (Blank).

14 Section 504. Transitional provisions.

15 (a) This Act applies to guardianship and protective
16 proceedings begun on or after the effective date of this Act.

17 (b) Articles 1, 3, and 4 and Sections 501 and 502 apply to
18 proceedings begun before the effective date of this Act,
19 regardless of whether a guardianship or protective order has
20 been issued.

21 Section 505. Effective date. (Blank).