

SENATE BILL No. 466

September 10, 2013, Introduced by Senator SCHUITMAKER and referred to the Committee on Judiciary.

A bill to enact the uniform adult guardianship and protective proceedings jurisdiction act; and to provide procedures to resolve interstate controversies relating to multiple jurisdiction and the transfer and out-of-state recognition of adult guardianships, conservatorships, and other protective proceedings.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

ARTICLE 1

GENERAL PROVISIONS

Sec. 101. This act shall be known and may be cited as the "uniform adult guardianship and protective proceedings jurisdiction act".

Sec. 102. As used in this act:

(a) "Adult" means an individual who has attained 18 years of

1 age.

2 (b) "Conservator" means a person appointed by the court to
3 administer the property of an adult, including a person appointed
4 under article V of the estates and protected individuals code, 1998
5 PA 386, MCL 700.5101 to 700.5520.

6 (c) "Guardian" means a person appointed by the court to make
7 decisions regarding the person of an adult, including a person
8 appointed under article V of the estates and protected individuals
9 code, 1998 PA 386, MCL 700.5101 to 700.5520.

10 (d) "Guardianship order" means an order appointing a guardian.

11 (e) "Guardianship proceeding" means a judicial proceeding in
12 which an order for the appointment of a guardian is sought or has
13 been issued.

14 (f) "Incapacitated person" means an adult for whom a guardian
15 has been appointed.

16 (g) "Party" means the respondent, petitioner, guardian,
17 conservator, or any other person allowed by the court to
18 participate in a guardianship or protective proceeding.

19 (h) "Person", except in the term incapacitated person or
20 protected person, means an individual, corporation, business trust,
21 estate, trust, partnership, limited liability company, association,
22 joint venture, public corporation, government or governmental
23 subdivision, agency, or instrumentality, or any other legal or
24 commercial entity.

25 (i) "Protected person" means an adult for whom a protective
26 order has been issued.

27 (j) "Protective order" means an order appointing a conservator

1 or other order related to management of an adult's property.

2 (k) "Protective proceeding" means a judicial proceeding in
3 which a protective order is sought or has been issued.

4 (l) "Record" means information that is inscribed on a tangible
5 medium or that is stored in an electronic or other medium and is
6 retrievable in perceivable form.

7 (m) "Respondent" means an adult for whom a protective order or
8 the appointment of a guardian is sought.

9 (n) "State" means a state of the United States, the District
10 of Columbia, Puerto Rico, the United States Virgin Islands, a
11 federally recognized Indian tribe, or any territory or insular
12 possession subject to the jurisdiction of the United States.

13 Sec. 103. A court of this state may treat a foreign country as
14 if it were a state for the purpose of applying this article and
15 articles 2, 3, and 4.

16 Sec. 104. (1) A court of this state may communicate with a
17 court in another state concerning a proceeding arising under this
18 act. The court may allow the parties to participate in the
19 communication. Except as otherwise provided in subsection (2), the
20 court shall make a record of the communication. The record may be
21 limited to the fact that the communication occurred.

22 (2) Courts may communicate concerning schedules, calendars,
23 court records, and other administrative matters without making a
24 record.

25 Sec. 105. (1) In a guardianship or protective proceeding in
26 this state, a court of this state may request the appropriate court
27 of another state to do any of the following:

1 (a) Hold an evidentiary hearing.

2 (b) Order a person in that state to produce evidence or give
3 testimony pursuant to procedures of that state.

4 (c) Order that an evaluation or assessment be made of the
5 respondent.

6 (d) Order any appropriate investigation of a person involved
7 in a proceeding.

8 (e) Forward to the court of this state a certified copy of the
9 transcript or other record of a hearing under subdivision (a) or
10 any other proceeding, any evidence otherwise produced under
11 subdivision (b), or any evaluation or assessment prepared in
12 compliance with an order under subdivision (c) or (d).

13 (f) Issue any order necessary to assure the appearance in the
14 proceeding of a person whose presence is necessary for the court to
15 make a determination, including the respondent or the incapacitated
16 or protected person.

17 (g) Issue an order authorizing the release of medical,
18 financial, criminal, or other relevant information in that state,
19 including protected health information as defined in 45 CFR
20 164.504.

21 (2) If a court of another state in which a guardianship or
22 protective proceeding is pending requests assistance of the kind
23 provided in subsection (1), a court of this state has jurisdiction
24 for the limited purpose of granting the request or making
25 reasonable efforts to comply with the request.

26 Sec. 106. (1) In a guardianship or protective proceeding, in
27 addition 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 that
4 the testimony of a witness be taken in another state and may
5 prescribe the manner in which and the terms upon which the
6 testimony is to be taken.

7 (2) 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 the
11 court of the other state in designating an appropriate location for
12 the deposition or testimony.

13 ARTICLE 2

14 JURISDICTION

15 Sec. 201. (1) As used in this article:

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

21 (b) "Home state" means the state in which the respondent was
22 physically present, including any period of temporary absence, for
23 at least 6 consecutive months immediately before the filing of a
24 petition for a protective order or the appointment of a guardian;
25 or if none, the state in which the respondent was physically
26 present, including any period of temporary absence, for at least 6
27 consecutive months ending within the 6 months prior to the filing

1 of the petition.

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

6 (2) In determining under sections 203 and 301(5) whether a
7 respondent has a significant connection with a particular state,
8 the court shall consider all of the following:

9 (a) The location of the respondent's family and other persons
10 required to be notified of the guardianship or protective
11 proceeding.

12 (b) The length of time the respondent at any time was
13 physically present in the state and the duration of any absence.

14 (c) The location of the respondent's property.

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

19 Sec. 202. This article provides the exclusive jurisdictional
20 basis for a court of this state to appoint a guardian or issue a
21 protective order for an adult.

22 Sec. 203. A court of this state has jurisdiction to appoint a
23 guardian or issue a protective order for a respondent if 1 or more
24 of the following apply:

25 (a) This state is the respondent's home state.

26 (b) On the date the petition is filed, this state is a
27 significant-connection state and either of the following apply:

1 (i) The respondent does not have a home state or a court of the
2 respondent's home state has declined to exercise jurisdiction
3 because this state is a more appropriate forum.

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

8 (A) A petition for an appointment or order is not filed in the
9 respondent's home state.

10 (B) An objection to the court's jurisdiction is not filed by a
11 person required to be notified of the proceeding.

12 (C) The court in this state concludes that it is an
13 appropriate forum under the factors set forth in section 206.

14 (c) This state does not have jurisdiction under either
15 subdivision (a) or (b), the respondent's home state and all
16 significant-connection states have declined to exercise
17 jurisdiction because this state is the more appropriate forum, and
18 jurisdiction in this state is consistent with the constitutions of
19 this state and the United States.

20 (d) The requirements for special jurisdiction under section
21 204 are met.

22 Sec. 204. (1) A court of this state lacking jurisdiction under
23 section 203 has special jurisdiction to do any of the following:

24 (a) Appoint a guardian in an emergency for a term not
25 exceeding 90 days for a respondent who is physically present in
26 this state.

27 (b) Issue a protective order with respect to real or tangible

1 personal property located in this state.

2 (c) Appoint a guardian or conservator for an incapacitated or
3 protected person for whom a provisional order to transfer the
4 proceeding from another state has been issued under procedures
5 similar to section 301.

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

12 Sec. 205. Except as otherwise provided in section 204, a court
13 that has appointed a guardian or issued a protective order
14 consistent with this act has exclusive and continuing jurisdiction
15 over the proceeding until it is terminated by the court or the
16 appointment or order expires by its own terms.

17 Sec. 206. (1) A court of this state having jurisdiction under
18 section 203 to appoint a guardian or issue a protective order may
19 decline to exercise its jurisdiction if it determines at any time
20 that a court of another state is a more appropriate forum.

21 (2) If a court of this state declines to exercise its
22 jurisdiction under subsection (1), it shall either dismiss or stay
23 the proceeding. The court may impose any condition the court
24 considers just and proper, including the condition that a petition
25 for the appointment of a guardian or issuance of a protective order
26 be filed promptly in another state.

27 (3) In determining whether it is an appropriate forum, the

1 court shall consider all relevant factors, including all of the
2 following:

3 (a) Any expressed preference of the respondent.

4 (b) Whether abuse, neglect, or exploitation of the respondent
5 has occurred or is likely to occur and which state could best
6 protect the respondent from the abuse, neglect, or exploitation.

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

9 (d) The distance of the respondent from the court in each
10 state.

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

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

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

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

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

19 Sec. 207. (1) If at any time a court of this state determines
20 that it acquired jurisdiction to appoint a guardian or issue a
21 protective order because of unjustifiable conduct, the court may do
22 any of the following:

23 (a) Decline to exercise jurisdiction.

24 (b) Exercise jurisdiction for the limited purpose of
25 fashioning an appropriate remedy to ensure the health, safety, and
26 welfare of the respondent or the protection of the respondent's
27 property or prevent a repetition of the unjustifiable conduct,

1 including staying the proceeding until a petition for the
2 appointment of a guardian or issuance of a protective order is
3 filed in a court of another state having jurisdiction.

4 (c) Continue to exercise jurisdiction after considering all of
5 the following:

6 (i) The extent to which the respondent and all persons required
7 to be notified of the proceedings have acquiesced in the exercise
8 of the court's jurisdiction.

9 (ii) Whether it is a more appropriate forum than the court of
10 any other state under the factors set forth in section 206(3).

11 (iii) Whether the court of any other state would have
12 jurisdiction under factual circumstances in substantial conformity
13 with the jurisdictional standards of section 203.

14 (2) If a court of this state determines that it acquired
15 jurisdiction to appoint a guardian or issue a protective order
16 because a party seeking to invoke its jurisdiction engaged in
17 unjustifiable conduct, it may assess against that party necessary
18 and reasonable expenses, including attorney fees, investigative
19 fees, court costs, communication expenses, witness fees and
20 expenses, and travel expenses. The court may not assess fees,
21 costs, or expenses of any kind against this state or a governmental
22 subdivision, agency, or instrumentality of this state unless
23 authorized by law other than this act.

24 Sec. 208. If a petition for the appointment of a guardian or
25 issuance of a protective order is brought in this state and this
26 state was not the respondent's home state on the date the petition
27 was filed, in addition to complying with the notice requirements of

1 this state, notice of the petition shall be given to those persons
2 who would be entitled to notice of the petition if a proceeding
3 were brought in the respondent's home state. The notice shall be
4 given in the same manner as notice is required to be given in this
5 state.

6 Sec. 209. Except for a petition for the appointment of a
7 guardian in an emergency or issuance of a protective order limited
8 to property located in this state under section 204(1)(a) or (b),
9 if a petition for the appointment of a guardian or issuance of a
10 protective order is filed in this state and in another state and
11 neither petition has been dismissed or withdrawn, the following
12 rules apply:

13 (a) If the court in this state has jurisdiction under section
14 203, it may proceed with the case unless a court in another state
15 acquires jurisdiction under provisions similar to section 203
16 before the appointment or issuance of the order.

17 (b) If the court in this state does not have jurisdiction
18 under section 203, whether at the time the petition is filed or at
19 any time before the appointment or issuance of the order, the court
20 shall stay the proceeding and communicate with the court in the
21 other state. If the court in the other state has jurisdiction, the
22 court in this state shall dismiss the petition unless the court in
23 the other state determines that the court in this state is a more
24 appropriate forum.

25 ARTICLE 3

26 TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

27 Sec. 301. (1) A guardian or conservator appointed in this

1 state may petition the court to transfer the guardianship or
2 conservatorship to another state.

3 (2) Notice of a petition under subsection (1) shall be given
4 to the persons that would be entitled to notice of a petition in
5 this state for the appointment of a guardian or conservator.

6 (3) On the court's own motion or on request of the guardian or
7 conservator, the incapacitated or protected person, or other person
8 required to be notified of the petition, the court shall hold a
9 hearing on a petition filed under subsection (1).

10 (4) The court shall issue an order provisionally granting a
11 petition to transfer a guardianship and shall direct the guardian
12 to petition for guardianship in the other state if the court is
13 satisfied that the guardianship will be accepted by the court in
14 the other state and the court finds that all of the following
15 apply:

16 (a) The incapacitated person is physically present in or is
17 reasonably expected to move permanently to the other state.

18 (b) An objection to the transfer has not been made or, if an
19 objection has been made, the objector has not established that the
20 transfer would be contrary to the interests of the incapacitated
21 person.

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

24 (5) The court shall issue a provisional order granting a
25 petition to transfer a conservatorship and shall direct the
26 conservator to petition for conservatorship in the other state if
27 the court is satisfied that the conservatorship will be accepted by

1 the court of the other state and the court finds that all of the
2 following apply:

3 (a) The protected person is physically present in or is
4 reasonably expected to move permanently to the other state, or the
5 protected person has a significant connection to the other state
6 considering the factors in section 201(2).

7 (b) An objection to the transfer has not been made or, if an
8 objection has been made, the objector has not established that the
9 transfer would be contrary to the interests of the protected
10 person.

11 (c) Adequate arrangements will be made for management of the
12 protected person's property.

13 (6) The court shall issue a final order confirming the
14 transfer and terminating the guardianship or conservatorship upon
15 its receipt of all of the following:

16 (a) A provisional order accepting the proceeding from the
17 court to which the proceeding is to be transferred that is issued
18 under provisions similar to section 302.

19 (b) The documents required to terminate a guardianship or
20 conservatorship in this state.

21 Sec. 302. (1) To confirm transfer of a guardianship or
22 conservatorship transferred to this state under provisions similar
23 to section 301, the guardian or conservator shall petition the
24 court in this state to accept the guardianship or conservatorship.
25 The petition shall include a certified copy of the other state's
26 provisional order of transfer.

27 (2) Notice of a petition under subsection (1) shall be given

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

6 (3) On the court's own motion or on request of the guardian or
7 conservator, the incapacitated or protected person, or other person
8 required to be notified of the proceeding, the court shall hold a
9 hearing on a petition filed under subsection (1).

10 (4) The court shall issue an order provisionally granting a
11 petition filed under subsection (1) unless either of the following
12 apply:

13 (a) An objection is made and the objector establishes that
14 transfer of the proceeding would be contrary to the interests of
15 the incapacitated or protected person.

16 (b) The guardian or conservator is ineligible for appointment
17 in this state.

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

24 (6) Not later than 90 days after issuance of a final order
25 accepting transfer of a guardianship or conservatorship, the court
26 shall determine whether the guardianship or conservatorship needs
27 to be modified to conform to the law of this state.

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

6 (8) The denial by a court of this state of a petition to
7 accept a guardianship or conservatorship transferred from another
8 state does not affect the ability of the guardian or conservator to
9 seek appointment as guardian or conservator in this state under
10 article V of the estates and protected individuals code, 1998 PA
11 386, MCL 700.5101 to 700.5520, if the court has jurisdiction to
12 make an appointment other than by reason of the provisional order
13 of transfer.

14 ARTICLE 4

15 MISCELLANEOUS PROVISIONS

16 Sec. 401. In applying and construing this uniform act,
17 consideration shall be given to the need to promote uniformity of
18 the law with respect to its subject matter among states that enact
19 it.

20 Sec. 402. This act modifies, limits, and supersedes the
21 federal electronic signatures in global and national commerce act,
22 15 USC 7001 to 7031, but does not modify, limit, or supersede 15
23 USC 7001(c), or authorize electronic delivery of any of the notices
24 described in 15 USC 7003(b).

25 Sec. 403. (1) This act applies to guardianship and protective
26 proceedings begun on or after the effective date of this act.

27 (2) Articles 1 and 3 and sections 401 and 402 apply to

1 proceedings begun before the effective date of this act, regardless
2 of whether a guardianship or protective order has been issued.

3 Enacting section 1. This act does not take effect unless
4 Senate Bill No.465
5 of the 97th Legislature is enacted into law.