

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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**Legislative Document**

**No. 1377**

H.P. 1016

House of Representatives, March 31, 2011

### **An Act To Adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative SANBORN of Gorham.  
Cosponsored by Senator BRANNIGAN of Cumberland and  
Representatives: MacDONALD of Boothbay, ROTUNDO of Lewiston, STUCKEY of  
Portland, WEBSTER of Freeport, Senator: CRAVEN of Androscoggin.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 18-A MRSA Art. 5, Pt. 5-A** is enacted to read:

3  
4 **UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE**  
5 **PROCEEDINGS JURISDICTION ACT**

6  
7 **PREFATORY NOTE**  
8

9 The Uniform Guardianship and Protective Proceedings Act (UGPPA),  
10 which was last revised in 1997, is a comprehensive act addressing all aspects of  
11 guardianships and protective proceedings for both minors and adults. The Uniform  
12 Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) has  
13 a much narrower scope, dealing only with jurisdiction and related issues in adult  
14 proceedings. Drafting of the UAGPPJA began in 2005. The Act had its first  
15 reading at the Uniform Law Commission 2006 Annual Meeting, and was  
16 approved at the 2007 Annual Meeting.  
17

18 States may enact the UAGPPJA either separately or as part of the broader  
19 UGPPA or the even broader Uniform Probate Code (UPC), of which the UGPPA  
20 forms a part. Conforming amendments to the UGPPA and UPC are expected to be  
21 approved in 2009 that will facilitate enactment of the UAGPPJA by states that  
22 have enacted the UGPPA or UPC.  
23

24 **The Problem of Multiple Jurisdiction**  
25

26 Because the United States has 50 plus guardianship systems, problems of  
27 determining jurisdiction are frequent. Questions of which state has jurisdiction to  
28 appoint a guardian or conservator can arise between an American state and  
29 another country. But more frequently, problems arise because the individual has  
30 contacts with more than one American state.  
31

32 In nearly all American states, a guardian may be appointed by a court in a  
33 state in which the individual is domiciled or is physically present. In nearly all  
34 American states, a conservator may be appointed by a court in a state in which the  
35 individual is domiciled or has property. Contested cases in which courts in more  
36 than one state have jurisdiction are becoming more frequent. Sometimes these  
37 cases arise because the adult is physically located in a state other than the adult's  
38 domicile. Sometimes the case arises because of uncertainty as to the adult's  
39 domicile, particularly if the adult owns a second home in another state. There is a  
40 need for an effective mechanism for resolving multi-jurisdictional disputes.  
41 Article 2 of the UAGPPJA is intended to provide such a mechanism.  
42

## **The Problem of Transfer**

Oftentimes, problems arise even absent a dispute. Even if everyone is agreed that an already existing guardianship or conservatorship should be moved to another state, few states have streamlined procedures for transferring a proceeding to another state or for accepting such a transfer. In most states, all of the procedures for an original appointment must be repeated, a time consuming and expensive prospect. Article 3 of the UAGPPJA is designed to provide an expedited process for making such transfers, thereby avoiding the need to relitigate incapacity and whether the guardian or conservator appointed in the first state was an appropriate selection.

## **The Problem of Out-of-State Recognition**

The Full Faith and Credit Clause of the United States Constitution requires that court orders in one state be honored in another state. But there are exceptions to the full faith and credit doctrine, of which guardianship and protective proceedings is one. Sometimes, guardianship or protective proceedings must be initiated in a second state because of the refusal of financial institutions, care facilities, and the courts to recognize a guardianship or protective order issued in another state. Article 4 of the UAGPPJA creates a registration procedure. Following registration of the guardianship or protective order in the second state, the guardian may exercise in the second state all powers authorized in the original state's order of appointment except for powers that cannot be legally exercised in the second state.

## **The Proposed Uniform Law and the Child Custody Analogy**

Similar problems of jurisdiction existed for many years in the United States in connection with child custody determinations. If one parent lived in one state and the other parent lived in another state, frequently courts in more than one state had jurisdiction to issue custody orders. But the Uniform Law Conference has approved two uniform acts that have effectively minimized the problem of multiple court jurisdiction in child custody matters; the Uniform Child Custody Jurisdiction Act (UCCJA), approved in 1968, succeeded by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), approved in 1997. The drafters of the UAGPPJA have elected to model Article 2 and portions of Article 1 of their Act after these child custody analogues. However, the UAGPPJA applies only to adult proceedings. The UAGPPJA is limited to adults in part because most jurisdictional issues involving guardianships for minors are subsumed by the UCCJEA.

## **The Objectives and Key Concepts of the Proposed UAGPPJA**

1           The UAGPPJA is organized into five articles. Article 1 contains  
2 definitions and provisions designed to facilitate cooperation between courts in  
3 different states. Article 2 is the heart of the Act, specifying which court has  
4 jurisdiction to appoint a guardian or conservator or issue another type of protective  
5 order and contains definitions applicable only to that article. Its principal objective  
6 is to assure that an appointment or order is made or issued in only one state except  
7 in cases of emergency or in situations where the individual owns property located  
8 in multiple states. Article 3 specifies a procedure for transferring a guardianship or  
9 conservatorship proceedings from one state to another state. Article 4 deals with  
10 enforcement of guardianship and protective orders in other states. Article 5  
11 contains an effective date provision, a place to list provisions of existing law to be  
12 repealed or amended, and boilerplate provisions common to all uniform acts.

### 13 14 **Key Definitions (Section 201)**

15  
16           To determine which court has primary jurisdiction under the UAGPPJA,  
17 the key factors are to determine the individual's "home state" and "significant-  
18 connection state." A "home state" (Section 201(a)(2)) is the state in which the  
19 individual was physically present, including any period of temporary absence, for  
20 at least six consecutive months immediately before the filing of a petition for a  
21 protective order or appointment of a guardian. If the respondent was not  
22 physically present in a single state for the six months immediately preceding the  
23 filing of the petition, the home state is the place where the respondent was last  
24 physically present for at least six months as long as such presence ended within  
25 the six months prior to the filing of the petition. Section 201(a)(2). Stated another  
26 way, the ability of the home state to appoint a guardian or enter a protective order  
27 for an individual continues for up to six months following the individual's physical  
28 relocation to another state.

29  
30           A "significant-connection state," which is a potentially broader concept,  
31 means the state in which the individual has a significant connection other than  
32 mere physical presence, and where substantial evidence concerning the individual  
33 is available. Section 201(a)(3). Factors that may be considered in deciding  
34 whether a particular respondent has a significant connection include:

- 35  
36           • the location of the respondent's family and others required to be notified of  
37 the guardianship or protective proceeding;  
38           • the length of time the respondent was at any time physically present in the  
39 state and the duration of any absences;  
40           • the location of the respondent's property; and  
41           • the extent to which the respondent has other ties to the state such as voting  
42 registration, filing of state or local tax returns, vehicle registration, driver's  
43 license, social relationships, and receipt of services. Section 201(b).  
44

1 A respondent in a guardianship or protective proceeding may have  
2 multiple significant-connection states but will have only one home state.  
3

## 4 **Jurisdiction (Article 2)** 5

6 Section 203 is the principal provision governing jurisdiction, creating a  
7 three-level priority; the home state, followed by a significant-connection state,  
8 followed by other jurisdictions:  
9

- 10 • *Home State*: The home state has primary jurisdiction to appoint a guardian  
11 or conservator or issue another type of protective order.  
12
- 13 • *Significant-connection State*: A significant-connection state has  
14 jurisdiction to appoint a guardian or conservator or issue another type of  
15 protective order if on the date the petition was filed:
  - 16 • the respondent does not have a home state or the home state has  
17 declined jurisdiction on the basis that the significant-connection  
18 state is a more appropriate forum; or
  - 19 • the respondent has a home state, a petition for an appointment or  
20 order is not pending in a court of that state or another significant-  
21 connection state, and, before the court makes the appointment or  
22 issues the order (i) a petition for an appointment or order is not  
23 filed in the respondent's home state; (ii) an objection to the court's  
24 jurisdiction is not filed by a person required to be notified of the  
25 proceeding; and (iii) the court in this state concludes that it is an  
26 appropriate forum under the factors set forth in Section 206.  
27
- 28 • *Another State*: A court in another state has jurisdiction if the home state  
29 and all significant-connection states have declined jurisdiction because the  
30 court in the other state is a more appropriate forum, or the respondent does  
31 not have a home state or significant-connection state.  
32

33 Section 204 addresses special cases. Regardless of whether it has  
34 jurisdiction under the general principles stated in Section 203, a court in the state  
35 where the respondent is currently physically present has jurisdiction to appoint a  
36 guardian in an emergency, and a court in a state where a respondent's real or  
37 tangible personal property is located has jurisdiction to appoint a conservator or  
38 issue another type of protective order with respect to that property. In addition, a  
39 court not otherwise having jurisdiction under Section 203 has jurisdiction to  
40 consider a petition to accept the transfer of an already existing guardianship or  
41 conservatorship from another state as provided in Article 3.  
42

43 The remainder of Article 2 elaborates on these core concepts. Section 205  
44 provides that once a guardian or conservator is appointed or other protective order

1 is issued, the court's jurisdiction continues until the proceeding is terminated or  
2 transferred or the appointment or order expires by its own terms. Section 206  
3 authorizes a court to decline jurisdiction if it determines that the court of another  
4 state is a more appropriate forum, and specifies the factors to be taken into account  
5 in making this determination. Section 207 authorizes a court to decline jurisdiction  
6 or fashion another appropriate remedy if jurisdiction was acquired because of  
7 unjustifiable conduct. Section 208 prescribes additional notice requirements if a  
8 proceeding is brought in a state other than the respondent's home state. Section  
9 209 specifies a procedure for resolving jurisdictional issues if petitions are  
10 pending in more than one state. The UAGPPJA also includes provisions regarding  
11 communication between courts in different states, requests for assistance made by  
12 a court to a court of another state, and the taking of testimony in another state.  
13 Sections 104-106.

### 14 15 **Transfer to Another State (Article 3)**

16  
17 Article 3 specifies a procedure for transferring an already existing  
18 guardianship or conservatorship to another state. To make the transfer, court  
19 orders are necessary from both the court transferring the case and from the court  
20 accepting the case. The transferring court must find that the incapacitated or  
21 protected person is physically present in or is reasonably expected to move  
22 permanently to the other state, that adequate arrangements have been made for the  
23 person or the person's property in the other state, and that the court is satisfied the  
24 case will be accepted by the court in the other state. To assure continuity, the court  
25 in the transferring state cannot dismiss the local proceeding until the order from  
26 the state accepting the case is filed with the transferring court. To expedite the  
27 transfer process, the court in the accepting state must give deference to the  
28 transferring court's finding of incapacity and selection of the guardian or  
29 conservator. Much of Article 3 is based on the pioneering work of the National  
30 Probate Court Standards, a 1993 joint project of the National College of Probate  
31 Judges and the National Center for State Courts.

### 32 33 **Out of State Enforcement (Article 4)**

34  
35 To facilitate enforcement of guardianship and protective orders in other  
36 states, Article 4 authorizes a guardian or conservator to register these orders in  
37 other states. Upon registration, the guardian or conservator may exercise in the  
38 registration state all powers authorized in the order except as prohibited by the  
39 laws of the registration state.

### 40 41 **International Application (Section 103)**

42  
43 Section 103 addresses application of the Act to guardianship and protective  
44 orders issued in other countries. A foreign order is not enforceable pursuant to the

1 registration procedures under Article 4, but a court in the United States may  
2 otherwise apply the Act as if the foreign country were an American state.

### 3 4 **The Problem of Differing Terminology**

5  
6 States differ on terminology for the person appointed by the court to  
7 handle the personal and financial affairs of a minor or incapacitated adult. Under  
8 the UGPPA and in a majority of American states, a "guardian" is appointed to  
9 make decisions regarding the person of an "incapacitated person;" a "conservator"  
10 is appointed in a "protective proceeding" to manage the property of a "protected  
11 person." But in many states, only a "guardian" is appointed, either a guardian of  
12 the person or guardian of the estate, and in a few states, the terms guardian and  
13 conservator are used but with different meanings. The UAGPPJA adopts the  
14 terminology used in the UGPPA and in a majority of the states. An enacting state  
15 that uses a different term than "guardian" or "conservator" for the person  
16 appointed by the court or that defines either of these terms differently than does  
17 the UGPPA may, but is not encouraged to, substitute its own term or definition.  
18 Use of common terms and definitions by states enacting the Act will facilitate  
19 resolution of cases involving multiple jurisdictions.  
20

21 The Drafting Committee was assisted by numerous officially  
22 designated advisors and observers, representing an array of organizations. In  
23 addition to the American Bar Association advisors listed above, important  
24 contributions were made by Sally Hurme of AARP, Terry W. Hammond of the  
25 National Guardianship Association, Kathleen T. Whitehead and Shirley B.  
26 Whitenack of the National Academy of Elder Law Attorneys, Catherine Anne  
27 Seal of the Colorado Bar Association, Kay Farley of the National Center for State  
28 Courts, and Robert G. Spector, the Reporter for the Joint Editorial Board for  
29 Uniform Family Laws and the Reporter for the Uniform Child Custody  
30 Jurisdiction and Enforcement Act (1997).

## 31 32 **PART 5-A**

# 33 **UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS** 34 **JURISDICTION ACT**

## 35 **SUBPART 1**

## 36 **GENERAL PROVISIONS**

### 37 38 **General Comment** 39



Article 1 contains definitions and general provisions used throughout the Act. Definitions applicable only to Article 2 are found in Section 201. Section 101 is the title, Section 102 contains the definitions, and Sections 103-106 the general provisions. Section 103 provides that a court of an enacting state may treat a foreign country as a state for the purpose of applying all portions of the Act other than Article 4, Section 104 addresses communication between courts, Section 105 requests by a court to a court in another state for assistance, and Section 106 the taking of testimony in other states. These Article 1 provisions relating to court communication and assistance are essential tools to assure the effectiveness of the provisions of Article 2 determining jurisdiction and in facilitating transfer of a proceeding to another state as authorized in Article 3.

#### **§5-511. Short title**

This Part may be known and cited as "the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act."

#### **Comment**

(This is Section 101 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.)

The title to the Act succinctly describes the Act's scope. The Act applies only to court jurisdiction and related topics for adults for whom the appointment of a guardian or conservator or other protective order is being sought or has been issued.

The drafting committee elected to limit the Act to adults for two reasons. First, jurisdictional issues concerning guardians for minors are subsumed by the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Second, while the UCCJEA does not address conservatorship and other issues involving the property of minors, all of the problems and concerns that led the Uniform Law Commission to appoint a drafting committee involved adults.

#### **§5-512. Definitions**

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

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

(b). "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under Part 4.

(c). "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Part 3.

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

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

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

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

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

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

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

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

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

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

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

### Comment

(This is Section 102 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.)

The definition of "adult" (paragraph (1)) would exclude an emancipated minor. The Act is not designed to supplant the local substantive law on guardianship. States whose guardianship law treats emancipated minors as adults may wish to modify this definition.

1  
2 Three of the other definitions are standard uniform law terms. These are  
3 the definitions of "person" (paragraph (8)), "record" (paragraph (12)), and "state"  
4 (paragraph (14)). Two are common procedural terms. The individual for whom a  
5 guardianship or protective order is sought is a "respondent" (paragraph (13)). A  
6 person who may participate in a guardianship or protective proceeding is referred  
7 to as a "party" (paragraph (7)).  
8

9 The remaining definitions refer to standard guardianship terminology used  
10 in a majority of states. A "guardian" (paragraph (3)) is appointed in a  
11 "guardianship order" (paragraph (4)) which is issued as part of a "guardianship  
12 proceeding" (paragraph (5)) and which authorizes the guardian to make decisions  
13 regarding the person of an "incapacitated person" (paragraph (6)). A "conservator"  
14 (paragraph (2)) is appointed pursuant to a "protective order" (paragraph (10))  
15 which is issued as part of a "protective proceeding" (paragraph (11)) and which  
16 authorizes the conservator to manage the property of a "protected person"  
17 (paragraph (9)).  
18

19 In most states, a protective order may be issued by the court without the  
20 appointment of a conservator. For example, under the Uniform Guardianship and  
21 Protective Proceedings Act, the court may authorize a so-called single transaction  
22 for the security, service, or care meeting the foreseeable needs of the protected  
23 person, including the payment, delivery, deposit, or retention of property; sale,  
24 mortgage, lease, or other transfer of property; purchase of an annuity; making a  
25 contract for life care, deposit contract, or contract for training and education; and  
26 the creation of or addition to a suitable trust. UGPPA (1997) §412(1). It is for this  
27 reason that the Act contains frequent references to the broader category of  
28 protective orders. Where the Act is intended to apply only to conservatorships,  
29 such as in Article 3 dealing with transfers of proceedings to other states, the Act  
30 refers to conservatorship and not to the broader category of protective proceeding.  
31

32 The Act does not limit the types of conservatorships or guardianships to  
33 which the Act applies. The Act applies whether the conservatorship or  
34 guardianship is denominated as plenary, limited, temporary or emergency. The  
35 Act, however, would not ordinarily apply to a guardian ad litem, who is ordinarily  
36 appointed by the court to represent a person or conduct an investigation in a  
37 specified legal proceeding.  
38

39 Section 102 is not the sole definitional section in the Act. Section 201  
40 contains definitions of important terms used only in Article 2. These are the  
41 definitions of "emergency" (Section 201(1)), "home state" (Section 201(2)), and  
42 "significant-connection state" (Section 201(3)).

1       **§5-513. International application of Part**

2           A court of this State may treat a foreign country as if it were a state for the purpose of  
3           applying this subpart and subparts 2, 3 and 5.

4  
5                               **Comment**

6  
7           (This is Section 103 of the Uniform Adult Guardianship and Protective  
8           Proceedings Jurisdiction Act.)  
9

10           This section addresses application of the Act to guardianship and  
11           protective orders issued in other countries. A foreign order is not enforceable  
12           pursuant to the registration procedures of Article 4, but a court in this country may  
13           otherwise apply this Act to a foreign proceeding as if the foreign country were an  
14           American state. Consequently, a court may conclude that the court in the foreign  
15           country has jurisdiction because it constitutes the respondent's "home state" or  
16           "significant-connection state" and may therefore decline to exercise jurisdiction on  
17           the ground that the court of the foreign country has a higher priority under Section  
18           203. Or the court may treat the foreign country as if it were a state of the United  
19           States for purposes of applying the transfer provisions of Article 3.  
20

21           This section addresses similar issues to but differs in result from Section  
22           105 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997).  
23           Under the UCCJEA, the United States court must honor a custody order issued by  
24           the court of a foreign country if the order was issued under factual circumstances  
25           in substantial conformity with the jurisdictional standards of the UCCJEA. Only if  
26           the child custody law violates fundamental principles of human rights is  
27           enforcement excused. Because guardianship regimes vary so greatly around the  
28           world, particularly in civil law countries, it was concluded that under this Act a  
29           more flexible approach was needed. Under this Act, a court may but is not  
30           required to recognize the foreign order.  
31

32           The fact that a guardianship or protective order of a foreign country cannot  
33           be enforced pursuant to the registration procedures of Article 4 does not preclude  
34           enforcement by the court under some other provision or rule of law.  
35

36       **§5-514. Communication between courts**

37           (a). A court of this State may communicate with a court in another state concerning a  
38           proceeding arising under this Part. The court may allow the parties to participate in the  
39           communication. Except as otherwise provided in subsection (b), the court shall make a  
40           record of the communication. The record may be limited to the fact that the  
41           communication occurred.

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

### Comment

(This is Section 104 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.)

This section emphasizes the importance of communications among courts with an interest in a particular matter. Most commonly, this would include communication between courts of different states to resolve an issue of which court has jurisdiction to proceed under Article 2. It would also include communication between courts of different states to facilitate the transfer of a guardianship or conservatorship to a different state under Article 3. Communication can occur in a variety of ways, including by electronic means. This section does not prescribe the use of any particular means of communication.

The court may authorize the parties to participate in the communication. But the Act does not mandate participation or require that the court give the parties notice of any communication. Communication between courts is often difficult to schedule and participation by the parties may be impractical. Phone calls or electronic communications often have to be made after-hours or whenever the schedules of judges allow. When issuing a jurisdictional or transfer order, the court should set forth the extent to which a communication with another court may have been a factor in the decision.

This section includes brackets around the language relating to whether a record must be made of any communication with the court of the other state. As indicated by the Legislative Note to this section, the language is bracketed because of a concern in some states that a legislative enactment directing when a court must make a record in a judicial proceeding may violate the doctrine on separation of powers. The language is not bracketed because the drafters concluded that the making of a record is not important. Rather, if concerns about separation of powers lead to the deletion of the bracketed language, the enacting state is encouraged to achieve the objectives of the bracketed language by promulgating a comparable provision by judicial rule.

This section does not prescribe the extent of the record that the court must make, leaving that issue to the court. A record might include notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum summarizing a conversation, and email communications. No record need be made of relatively inconsequential matters such as scheduling, calendars, and court records.

Section 110 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) addresses similar issues as this section but is more detailed. As is the case with several other provisions of this Act, the drafters of this Act concluded that the more varied circumstances of adult guardianship and protective proceedings suggested a need for greater flexibility.

**§5-515. Cooperation between courts**

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

(1). Hold an evidentiary hearing;

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

(3). Order that an evaluation or assessment be made of the respondent;

(4). Order any appropriate investigation of a person involved in a proceeding;

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

(6). Issue any order necessary to ensure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated person or protected person;

(7). Issue an order authorizing the release of medical, financial, criminal or other relevant information in that state, including protected health information as defined in 45 Code of Federal Regulations, Section 160.103, as amended.

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

**Comment**

(This is Section 105 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.)

Subsection (a) of this section is similar to Section 112(a) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), although modified to address issues of concern in adult guardianship and protective proceedings and with the addition of subsection (a)(7), which addresses the release of health information protected under HIPAA. Subsection (b), which clarifies that a court

1 has jurisdiction to respond to requests for assistance from courts in other states  
2 even though it might otherwise not have jurisdiction over the proceeding, is not  
3 found in although probably implicit in the UCCJEA.  
4

5 Court cooperation is essential to the success of this Act. This section is  
6 designed to facilitate such court cooperation. It provides mechanisms for courts to  
7 cooperate with each other in order to decide cases in an efficient manner without  
8 causing undue expense to the parties. Courts may request assistance from courts of  
9 other states and may assist courts of other states. Typically, such assistance will be  
10 requested to resolve a jurisdictional issue arising under Article 2 or an issue  
11 concerning a transfer proceeding under Article 3.  
12

13 This section does not address assessment of costs and expenses, leaving  
14 that issue to local law. Should a court have acquired jurisdiction because of a  
15 party's unjustifiable conduct, Section 207(b) authorizes the court to assess against  
16 the party all costs and expenses, including attorney's fees.  
17

18 **§5-516. Taking testimony in another state**

19 (a). In a guardianship or protective proceeding, in addition to other procedures that  
20 may be available, testimony of a witness who is located in another state may be offered  
21 by deposition or other means allowable in this State for testimony taken in another state.  
22 The court on its own motion may order that the testimony of a witness be taken in another  
23 state and may prescribe the manner in which and the terms upon which the testimony is to  
24 be taken.

25 (b). In a guardianship or protective proceeding, a court in this State may permit a  
26 witness located in another state to be deposed or to testify by telephone or audiovisual or  
27 other electronic means. A court of this State shall cooperate with the court of the other  
28 state in designating an appropriate location for the deposition or testimony.

29 (c). Documentary evidence transmitted from another state to a court of this State by  
30 technological means that do not produce an original writing may not be excluded from  
31 evidence on an objection based on the best evidence rule.  
32

33 **Comment**

34  
35 (This is Section 106 of the Uniform Adult Guardianship and Protective  
36 Proceedings Jurisdiction Act.)  
37

38 This section is similar to Section 111 of the Uniform Child Custody  
39 Jurisdiction and Enforcement Act (1997). That section was in turn derived from  
40 Section 316 of the Uniform Interstate Family Support Act (1992) and the much

1 earlier and now otherwise obsolete Uniform Interstate and International Procedure  
2 Act (1962).

3  
4 This section is designed to fill the vacuum that often exists in cases  
5 involving an adult with interstate contacts when much of the essential information  
6 about the individual is located in another state.

7  
8 Subsection (a) empowers the court to initiate the gathering of out-of-state  
9 evidence, including depositions, written interrogatories and other discovery  
10 devices. The authority granted to the court in no way precludes the gathering of  
11 out-of-state evidence by a party, including the taking of depositions out-of-state.

12  
13 Subsections (b) and (c) clarify that modern modes of communication are  
14 permissible for the taking of depositions and receipt of documents into evidence.  
15 A state that has adequate exceptions to its best evidence rule to permit the  
16 introduction of evidence transmitted by facsimile or in electronic form should  
17 delete subsection (c), which has been placed in brackets for this reason.

18  
19 This section is consistent with and complementary to the Uniform  
20 Interstate Depositions and Discovery Act (2007), which specifies the procedure  
21 for taking depositions in other states.

## 22 23 **SUBPART 2**

## 24 **JURISDICTION**

### 25 26 **General Comment**

27  
28 The jurisdictional rules in Article 2 will determine which state's courts may  
29 appoint a guardian or conservator or issue another type of protective order. Section  
30 201 contains definitions of "emergency," "home state," and "significant-  
31 connection state," terms used only in Article 2 that are key to understanding the  
32 jurisdictional rules under the Act. Section 202 provides that Article 2 is the  
33 exclusive jurisdictional basis for a court of the enacting state to appoint a guardian  
34 or issue a protective order for an adult. Consequently, Article 2 is applicable even  
35 if all of the respondent's significant contacts are in-state. Section 203 is the  
36 principal provision governing jurisdiction, creating a three-level priority; the home  
37 state, followed by a significant-connection state, followed by other jurisdictions.  
38 But there are circumstances under Section 203 where a significant-connection  
39 state may have jurisdiction even if the respondent also has a home state, or a state  
40 that is neither a home or significant-connection state may be able to assume  
41 jurisdiction even though the particular respondent has both a home state and one



1 or more significant-connection states. One of these situations is if a state declines  
2 to exercise jurisdiction under Section 206 because a court of that state concludes  
3 that a court of another state is a more appropriate forum. Another is Section 207,  
4 which authorizes a court to decline jurisdiction or fashion another appropriate  
5 remedy if jurisdiction was acquired because of unjustifiable conduct. Section 205  
6 provides that once an appointment is made or order issued, the court's jurisdiction  
7 continues until the proceeding is terminated or the appointment or order expires by  
8 its own terms.

9  
10 Section 204 addresses special cases. Regardless of whether it has  
11 jurisdiction under the general principles stated in Section 203, a court in the state  
12 where the individual is currently physically present has jurisdiction to appoint a  
13 guardian in an emergency, and a court in a state where an individual's real or  
14 tangible personal property is located has jurisdiction to appoint a conservator or  
15 issue another type of protective order with respect to that property. In addition, a  
16 court not otherwise having jurisdiction under Section 203 has jurisdiction to  
17 consider a petition to accept the transfer of an already existing guardianship or  
18 conservatorship from another state as provided in Article 3.

19  
20 The remainder of Article 2 addresses procedural issues. Section 208  
21 prescribes additional notice requirements if a proceeding is brought in a state other  
22 than the respondent's home state. Section 209 specifies a procedure for resolving  
23 jurisdictional issues if petitions are pending in more than one state.

24  
25 **§5-521. Definitions; significant connection factors**

26 **(a).** As used in this subpart, unless the context otherwise indicates, the following  
27 terms have the following meanings.

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

32 (2). "Home state" means the state in which the respondent was physically present,  
33 including any period of temporary absence, for at least 6 consecutive months  
34 immediately before the filing of a petition for a protective order or the appointment of  
35 a guardian or, if none, the state in which the respondent was physically present,  
36 including any period of temporary absence, for at least 6 consecutive months ending  
37 within the 6 months prior to the filing of the petition.

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

41 **(b).** In determining under section 5-523 and section 5-531, subsection (e) whether a  
42 respondent has a significant connection with a particular state, the court shall consider:

- (1). The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;
- (2). The length of time the respondent at any time was physically present in the state and the duration of any absence;
- (3). The location of the respondent's property; and
- (4). The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship and receipt of services.

### Comment

(This is Section 201 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.)

The terms "emergency," "home state," and "significant-connection state" are defined in this section and not in Section 102 because they are used only in Article 2.

The definition of "emergency" (subsection (a)(1)) is taken from the emergency guardianship provision of the Uniform Guardianship and Protective Proceedings Act (1997), Section 312.

Pursuant to Section 204 of this Act, a court has jurisdiction to appoint a guardian in an emergency for a period of up to 90 days even though it does not otherwise have jurisdiction. However, the emergency appointment is subject to the direction of the court in the respondent's home state. Pursuant to Section 204(b), the emergency proceeding must be dismissed at the request of the court in the respondent's home state.

Appointing a guardian in an emergency should be an unusual event. Although most states have emergency guardianship statutes, not all states do, and in those states that do have such statutes, there is great variation on whether and how an emergency is defined. To provide some uniformity on when a court acquires emergency jurisdiction, the drafters of this Act concluded that adding a definition of emergency was essential. The definition does not preclude an enacting jurisdiction from appointing a guardian under an emergency guardianship statute with a different or broader test of emergency if the court otherwise has jurisdiction to make an appointment under Section 203.

Pursuant to Section 203, a court in the respondent's home state has primary jurisdiction to appoint a guardian or issue a protective order. A court in a significant-connection state has jurisdiction if the respondent does not have a

1 home state and in other circumstances specified in Section 203. The definitions of  
2 "home state" and "significant-connection state" are therefore important to an  
3 understanding of the Act.  
4

5 The definition of "home state" (subsection (a)(2)) is derived from but  
6 differs in a couple of respects from the definition of the same term in Section 102  
7 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). First,  
8 unlike the definition in the UCCJEA, the definition in this Act clarifies that actual  
9 physical presence is necessary. The UCCJEA definition instead focuses on where  
10 the child has "lived" for the prior six months. Basing the test on where someone  
11 has "lived" may imply that the term "home state" is similar to the concept of  
12 domicile. Domicile, in an adult guardianship context, is a vague concept that can  
13 easily lead to claims of jurisdiction by courts in more than one state. Second,  
14 under the UCCJEA, home state jurisdiction continues for six months following  
15 physical removal from the state and the state has ceased to be the actual home.  
16 Under this Act, the six-month tail is incorporated directly into the definition of  
17 home state. The place where the respondent was last physically present for six  
18 months continues as the home state for six months following physical removal  
19 from the state. This modification of the UCCJEA definition eliminates the need to  
20 refer to the six-month tail each time home state jurisdiction is mentioned in the  
21 Act.  
22

23 The definition of "significant-connection state" (subsection (a)(3)) is  
24 similar to Section 201(a)(2) of the Uniform Child Custody Jurisdiction and  
25 Enforcement Act (1997). However, subsection (b) of this Section adds a list of  
26 factors relevant to adult guardianship and protective proceedings to aid the court  
27 in deciding whether a particular place is a significant-connection state. Under  
28 Section 301(e)(1), the significant connection factors listed in the definition are to  
29 be taken into account in determining whether a conservatorship may be transferred  
30 to another state.  
31

#### 32 **§5-522. Exclusive basis**

33 This subpart provides the exclusive jurisdictional basis for a court of this State to  
34 appoint a guardian or issue a protective order for an adult.

#### 36 **Comment**

37  
38 (This is Section 202 of the Uniform Adult Guardianship and Protective  
39 Proceedings Jurisdiction Act.)  
40

41 Similar to Section 201(b) of the Uniform Child Custody Jurisdiction and  
42 Enforcement Act (1997), which provides that the UCCJEA is the exclusive basis

1 for determining jurisdiction to issue a child custody order, this section provides  
2 that this article is the exclusive jurisdictional basis for determining jurisdiction to  
3 appoint a guardian or issue a protective order for an adult. An enacting jurisdiction  
4 will therefore need to repeal any existing provisions addressing jurisdiction in  
5 guardianship and protective proceedings cases. A Legislative Note to Section 503  
6 provides guidance on which provisions need to be repealed or amended. The  
7 drafters of this Act concluded that limiting the Act to "interstate" cases was  
8 unworkable. Such cases are hard to define, but even if they could be defined,  
9 overlaying this Act onto a state's existing jurisdictional rules would leave too  
10 many gaps and inconsistencies. In addition, if the particular case is truly local, the  
11 local court would likely have jurisdiction under both this Act as well as under  
12 prior law.  
13

14 **§5-523. Jurisdiction**

15 A court of this State has jurisdiction to appoint a guardian or issue a protective order  
16 for a respondent if:

17 (a). This State is the respondent's home state;

18 (b). On the date the petition is filed, this State is a significant-connection state and:

19 (1). The respondent does not have a home state or a court of the respondent's home  
20 state has declined to exercise jurisdiction because this State is a more appropriate  
21 forum;

22 (2). The respondent has a home state, a petition for an appointment or order is not  
23 pending in a court of that state or another significant-connection state and, before the  
24 court makes the appointment or issues the order;

25 (i) A petition for an appointment or order is not filed in the respondent's home  
26 state;

27 (ii) An objection to the court's jurisdiction is not filed by a person required to be  
28 notified of the proceeding; and

29 (iii) The court in this State concludes that it is an appropriate forum under the  
30 factors set forth in section 5-526;

31 (3). This State does not have jurisdiction under either paragraph (1) or (2), the  
32 respondent's home state and all significant-connection states have declined to  
33 exercise jurisdiction because this State is the more appropriate forum and jurisdiction  
34 in this State is consistent with the constitutions of this State and the United States; or

35 (4). The requirements for special jurisdiction under section 5-524 are met.  
36

37 **Comment**  
38

1 (This is Section 203 of the Uniform Adult Guardianship and Protective  
2 Proceedings Jurisdiction Act.)  
3

4 Similar to the Uniform Child Custody Jurisdiction and Enforcement Act  
5 (1997), this Act creates a three-level priority for determining which state has  
6 jurisdiction to appoint a guardian or issue a protective order; the home state  
7 (defined in Section 201(a)(2)), followed by a significant-connection state (defined  
8 in Section 201(a)(3)), followed by other jurisdictions. The principal objective of  
9 this section is to eliminate the possibility of dual appointments or orders except for  
10 the special circumstances specified in Section 204.  
11

12 While this section is the principal provision for determining whether a  
13 particular court has jurisdiction to appoint a guardian or issue a protective order, it  
14 is not the only provision. As indicated in the cross-reference in Section 203(4), a  
15 court that does not otherwise have jurisdiction under Section 203 may have  
16 jurisdiction under the special circumstances specified in Section 204.  
17

18 Pursuant to Section 203(1), the home state has primary jurisdiction to  
19 appoint a guardian or conservator or issue another type of protective order. This  
20 jurisdiction terminates if the state ceases to be the home state, if a court of the  
21 home state declines to exercise jurisdiction under Section 206 on the basis that  
22 another state is a more appropriate forum, or, as provided in Section 205, a court  
23 of another state has appointed a guardian or issued a protective order consistent  
24 with this Act. The standards by which a home state that has enacted the Act may  
25 decline jurisdiction on the basis that another state is a more appropriate forum are  
26 specified in Section 206. Should the home state not have enacted the Act, Section  
27 203(1) does not require that the declination meet the standards of Section 206.  
28

29 Once a petition is filed in a court of the respondent's home state, that state  
30 does not cease to be the respondent's home state upon the passage of time even  
31 though it may be many months before an appointment is made or order issued and  
32 during that period the respondent is physically located. Only upon dismissal of the  
33 petition can the court cease to be the home state due to the passage of time. Under  
34 the definition of "home state," the six-month physical presence requirement is  
35 fulfilled or not on the date the petition is filed. *See* Section 201(a)(2).  
36

37 A significant-connection state has jurisdiction under two possible bases;  
38 Section 203(2)(A) and Section 203(2)(B). Under Section 203(2)(A), a significant-  
39 connection state has jurisdiction if the individual does not have a home state or if  
40 the home state has declined jurisdiction on the basis that the significant-  
41 connection state is a more appropriate forum.  
42

43 Section 203(2)(B) is designed to facilitate consideration of cases where  
44 jurisdiction is not in dispute. Section 203(2)(B) allows a court in a significant-

1 connection state to exercise jurisdiction even though the respondent has a home  
2 state and the home state has not declined jurisdiction. The significant-connection  
3 state may assume jurisdiction under these circumstances, however, only in  
4 situations where the parties are not in disagreement concerning which court should  
5 hear the case. Jurisdiction may not be exercised by a significant-connection state  
6 under Section 203(2)(B) if (1) a petition has already been filed and is still pending  
7 in the home state or other significant-connection state; or (2) prior to making the  
8 appointment or issuing the order, a petition is filed in the respondent's home state  
9 or an objection to the court's jurisdiction is filed by a person required to be  
10 notified of the proceeding. Additionally, the court in the significant-connection  
11 state must conclude that it is an appropriate forum applying the factors listed in  
12 Section 206.

13  
14 There is nothing comparable to Section 203(2)(B) in the Uniform Child  
15 Custody Jurisdiction and Enforcement Act (1997). Under Section 201 of the  
16 UCCJEA a court in a significant-connection state acquires jurisdiction only if the  
17 child does not have a home state or the court of that state has declined jurisdiction.  
18 The drafters of this Act concluded that cases involving adults differed sufficiently  
19 from child custody matters that a different rule is appropriate for adult proceedings  
20 in situations where jurisdiction is uncontested.

21  
22 Pursuant to Section 203(3), a court in a state that is neither the home state  
23 or a significant-connection state has jurisdiction if the home state and all  
24 significant-connection states have declined jurisdiction or the respondent does not  
25 have a home state or significant-connection state. The state must have some  
26 connection with the proceeding, however. As Section 203(a)(3) clarifies,  
27 jurisdiction in the state must be consistent with the state and United States  
28 constitutions.

29  
30 **§5-524. Special jurisdiction**

31 (a). A court of this State lacking jurisdiction under section 5-523, subsections (a) to  
32 (c) has special jurisdiction to do any of the following:

33 (1). Appoint a guardian in an emergency for a term not exceeding 90 days for a  
34 respondent who is physically present in this State;

35 (2). Issue a protective order with respect to real or tangible personal property located  
36 in this State; or

37 (3). Appoint a guardian or conservator for an incapacitated person or protected  
38 person for whom a provisional order to transfer the proceeding from another state has  
39 been issued under procedures similar to section 5-531.

40 (b). If a petition for the appointment of a guardian in an emergency is brought in this  
41 State and this State was not the respondent's home state on the date the petition was filed,

1 the court shall dismiss the proceeding at the request of the court of the home state, if any,  
2 whether dismissal is requested before or after the emergency appointment.

### 3 4 **Comment**

5  
6 (This is Section 204 of the Uniform Adult Guardianship and Protective  
7 Proceedings Jurisdiction Act.)

8  
9 This section lists the special circumstances where a court without  
10 jurisdiction under the general rule of Section 203 has jurisdiction for limited  
11 purposes. The three purposes are (1) the appointment of a guardian in an  
12 emergency for a term not exceeding 90 days for a respondent who is physically  
13 located in the state (subsection (a)(1)); (2) the issuance of a protective order for a  
14 respondent who owns an interest in real or tangible personal property located in  
15 the state (subsection (a)(2)); and (3) the grant of jurisdiction to consider a petition  
16 requesting the transfer of a guardianship or conservatorship proceeding from  
17 another state (subsection (a)(3)). If the court has jurisdiction under Section 203,  
18 reference to Section 204 is unnecessary. The general jurisdiction granted under  
19 Section 203 includes within it all of the special circumstances specified in this  
20 section.

21  
22 When an emergency arises, action must often be taken on the spot in the  
23 place where the respondent happens to be physically located at the time. This  
24 place may not necessarily be located in the respondent's home state or even a  
25 significant-connection state. Subsection (a)(1) assures that the court where the  
26 respondent happens to be physically located at the time has jurisdiction to appoint  
27 a guardian in an emergency but only for a limited period of 90 days. The time  
28 limit is placed in brackets to signal that enacting states may substitute the time  
29 period under their existing emergency guardianship procedures. As provided in  
30 subsection (b), the emergency jurisdiction is also subject to the authority of the  
31 court in the respondent's home state to request that the emergency proceeding be  
32 dismissed. The theory here is that the emergency appointment in the temporary  
33 location should not be converted into a de facto permanent appointment through  
34 repeated temporary appointments.

35  
36 "Emergency" is specifically defined in Section 201(a)(1). Because of the  
37 great variation among the states on how an emergency is defined and its important  
38 role in conferring jurisdiction, the drafters of this Act concluded that adding a  
39 uniform definition of emergency was essential. The definition does not preclude  
40 an enacting jurisdiction from appointing a guardian under an emergency  
41 guardianship statute with a different or broader test of emergency if the court  
42 otherwise has jurisdiction to make an appointment under Section 203.  
43

1 Subsection (a)(2) grants a court jurisdiction to issue a protective order with  
2 respect to real and tangible personal property located in the state even though the  
3 court does not otherwise have jurisdiction. Such orders are most commonly issued  
4 when a conservator has been appointed but the protected person owns real  
5 property located in another state. The drafters specifically rejected using a general  
6 reference to any property located in the state because of the tendency of some  
7 courts to issue protective orders with respect to intangible personal property such  
8 as a bank account where the technical situs of the asset may have little relationship  
9 to the protected person.

10  
11 Subsection (a)(3) is closely related to and is necessary for the effectiveness  
12 of Article 3, which addresses transfer of a guardianship or conservatorship to  
13 another state. A "Catch-22" arises frequently in such cases. The court in the  
14 transferring state will not allow the incapacitated or protected person to move and  
15 will not terminate the case until the court in the transferee state has accepted the  
16 matter. But the court in the transferee state will not accept the case until the  
17 incapacitated or protected person has physically moved and presumably become a  
18 resident of the transferee state. Subsection (a)(3), which grants the court in the  
19 transferee state limited jurisdiction to consider a petition requesting transfer of a  
20 proceeding from another state, is intended to unlock the stalemate.

21  
22 Not included in this section but a provision also conferring special  
23 jurisdiction on the court is Section 105(b), which grants the court jurisdiction to  
24 respond to a request for assistance from a court of another state.  
25

#### 26 **§5-525. Exclusive and continuing jurisdiction**

27 Except as otherwise provided in section 5-524, a court that has appointed a guardian  
28 or issued a protective order consistent with this Part has exclusive and continuing  
29 jurisdiction over the proceeding until it is terminated by the court or the appointment or  
30 order expires by its own terms.

#### 31 32 **Comment**

33  
34 (This is Section 205 of the Uniform Adult Guardianship and Protective  
35 Proceedings Jurisdiction Act.)  
36

37 While this Act relies heavily on the Uniform Child Custody Jurisdiction  
38 and Enforcement Act (1997) for many basic concepts, the identity is not absolute.  
39 Section 202 of the UCCJEA specifies a variety of circumstances whereby a court  
40 can lose jurisdiction based on loss of physical presence by the child and others,  
41 loss of a significant connection, or unavailability of substantial evidence. Section  
42 203 of the UCCJEA addresses the jurisdiction of the court to modify a custody



1 determination made in another state. Nothing comparable to either UCCJEA  
2 section is found in this Act. Under this Act, a guardianship or protective order may  
3 be modified only upon request to the court that made the appointment or issued  
4 the order, which retains exclusive and continuing jurisdiction over the proceeding.  
5 Unlike child custody matters, guardianships and protective proceedings are  
6 ordinarily subject to continuing court supervision. Allowing the court's jurisdiction  
7 to terminate other than by its own order would open the possibility of competing  
8 guardianship or conservatorship appointments in different states for the same  
9 person at the same time, the problem under current law that enactment of this Act  
10 is designed to avoid. Should the incapacitated or protected person and others with  
11 an interest in the proceeding relocate to a different state, the appropriate remedy is  
12 to seek transfer of the proceeding to the other state as provided in Article 3.

13  
14 The exclusive and continuing jurisdiction conferred by this section only  
15 applies to guardianship orders made and protective orders issued under Section  
16 203. Orders made under the special jurisdiction conferred by Section 204 are not  
17 exclusive. And as provided in Section 204(b), the jurisdiction of a court in a state  
18 other than the home state to appoint a guardian in an emergency is subject to the  
19 right of a court in the home state to request that the proceeding be dismissed and  
20 any appointment terminated.

21  
22 Article 3 authorizes a guardian or conservator to petition to transfer the  
23 proceeding to another state. Upon the conclusion of the transfer, the court in the  
24 accepting state will appoint the guardian or conservator as guardian or conservator  
25 in the accepting state and the court in the transferring state will terminate the local  
26 proceeding, whereupon the jurisdiction of the transferring court terminates and the  
27 court in the accepting state acquires exclusive and continuing jurisdiction as  
28 provided in Section 205.

29  
30 **§5-526. Appropriate forum**

31 (a). A court of this State having jurisdiction under section 5-523 to appoint a  
32 guardian or issue a protective order may decline to exercise its jurisdiction if it  
33 determines at any time that a court of another state is a more appropriate forum.

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

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

40 (1). Any expressed preference of the respondent;



respondent's home state or in another significant-connection state. Under Section 207(a)(3)(B), the court is to consider these factors in deciding whether it will retain jurisdiction when unjustifiable conduct has occurred.

**§5-527. Jurisdiction declined by reason of conduct**

(a). If at any time a court of this State determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(1). Decline to exercise jurisdiction;

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

(3). Continue to exercise jurisdiction after considering:

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

(ii) Whether it is a more appropriate forum than the court of any other state under the factors set forth in section 5-526, subsection (c); and

(iii) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 5-523.

(b). If a court of this State determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses and travel expenses. The court may not assess fees, costs or expenses of any kind against this State or a governmental subdivision, agency or instrumentality of this State unless authorized by law other than this Part.

**Comment**

(This is Section 207 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.)

This section is similar to the Section 208 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Like the UCCJEA, this Act does not attempt to define "unjustifiable conduct," concluding that this issue is best left to

1 the courts. However, a common example could include the unauthorized removal  
2 of an adult to another state, with that state acquiring emergency jurisdiction under  
3 Section 204 immediately upon the move and home state jurisdiction under Section  
4 203 six months following the move if a petition for a guardianship or protective  
5 order is not filed during the interim in the soon-to-be former home state. Although  
6 child custody cases frequently raise different issues than do adult guardianship  
7 matters, the element of unauthorized removal is encountered in both types of  
8 proceedings. For the caselaw on unjustifiable conduct under the predecessor  
9 Uniform Child Custody Jurisdiction Act (1968), see David Carl Minneman,  
10 *Parties' Misconduct as Grounds for Declining Jurisdiction Under §8 of the*  
11 *Uniform Child Custody Jurisdiction Act (UCCJA)*, 16 A.L.R. 5th 650 (1993).

12  
13 Subsection (a) gives the court authority to fashion an appropriate remedy  
14 when it has acquired jurisdiction because of unjustifiable conduct. The court may  
15 decline to exercise jurisdiction; exercise jurisdiction for the limited purpose of  
16 fashioning an appropriate remedy to ensure the health, safety, and welfare of the  
17 respondent or the protection of the respondent's property or prevent a repetition of  
18 the unjustifiable conduct; or continue to exercise jurisdiction after considering  
19 several specified factors. Under subsection (a), the unjustifiable conduct need not  
20 have been committed by a party.

21  
22 Subsection (b) authorizes a court to assess costs and expenses, including  
23 attorney's fees, against a party whose unjustifiable conduct caused the court to  
24 acquire jurisdiction. Subsection (b) applies only if the unjustifiable conduct was  
25 committed by a party and allows for costs and expenses to be assessed only  
26 against that party. Similar to Section 208 of the UCCJEA, the court may not assess  
27 fees, costs, or expenses of any kind against this state or a governmental  
28 subdivision, agency, or instrumentality of the state unless authorized by other law.

29  
30 **§5-528. Notice of proceeding**

31 If a petition for the appointment of a guardian or issuance of a protective order is  
32 brought in this State and this State was not the respondent's home state on the date the  
33 petition was filed, in addition to complying with the notice requirements of this State,  
34 notice of the petition must be given to those persons who would be entitled to notice of  
35 the petition if a proceeding were brought in the respondent's home state. The notice must  
36 be given in the same manner as notice is required to be given in this State.

37  
38 **Comment**

39  
40  
41 (This is Section 208 of the Uniform Adult Guardianship and Protective  
42 Proceedings Jurisdiction Act.)

1  
2 While this Act tries not to interfere with a state's underlying substantive  
3 law on guardianship and protective proceedings, the issue of notice is  
4 fundamental. Under this section, when a proceeding is brought other than in the  
5 respondent's home state, the petitioner must give notice in the method provided  
6 under local law not only to those entitled to notice under local law but also to the  
7 persons required to be notified were the proceeding brought in the respondent's  
8 home state. Frequently, the respective lists of persons to be notified will be the  
9 same. But where the lists are different, notice under this section will assure that  
10 someone with a right to assert that the home state has a primary right to  
11 jurisdiction will have the opportunity to make that assertion.  
12

13 **§5-529. Proceedings in more than one state**

14 Except for a petition for the appointment of a guardian in an emergency or issuance  
15 of a protective order limited to property located in this State under section 5-524,  
16 subsection (a), paragraph (1) or (2), if a petition for the appointment of a guardian or  
17 issuance of a protective order is filed in this State and in another state and neither petition  
18 has been dismissed or withdrawn, the following apply:

19 (a). If the court in this State has jurisdiction under section 5-523, it may proceed with  
20 the case unless a court in another state acquires jurisdiction under provisions similar to  
21 section 5-523 before the appointment or issuance of the order.

22 (b). If the court in this State does not have jurisdiction under section 5-523, whether  
23 at the time the petition is filed or at any time before the appointment or issuance of the  
24 order, the court shall stay the proceeding and communicate with the court in the other  
25 state. If the court in the other state has jurisdiction, the court in this State shall dismiss the  
26 petition unless the court in the other state determines that the court in this State is a more  
27 appropriate forum.

28  
29 **Comment**

30  
31 (This is Section 209 of the Uniform Adult Guardianship and Protective  
32 Proceedings Jurisdiction Act.)  
33

34 Similar to Section 206 of the Uniform Child Custody Jurisdiction and  
35 Enforcement Act (1997), this section addresses the issue of which court has the  
36 right to proceed when proceedings for the same respondent are brought in more  
37 than one state. The provisions of this section, however, have been tailored to the  
38 needs of adult guardianship and protective proceedings and the particular  
39 jurisdictional provisions of this Act. Emergency guardianship appointments and  
40 protective proceedings with respect to property in other states (Sections 204(a)(1)  
41 and (a)(2)) are excluded from this section because the need for dual appointments

1 is frequent in these cases; for example, a petition will be brought in the  
2 respondent's home state but emergency action will be necessary in the place where  
3 the respondent is temporarily located, or a petition for the appointment of a  
4 conservator will be brought in the respondent's home state but real estate located  
5 in some other state needs to be brought under management.  
6

7 Under the Act only one court in which a petition is pending will have  
8 jurisdiction under Section 203. If a petition is brought in the respondent's home  
9 state, that court has jurisdiction over that of any significant-connection or other  
10 state. If the petition is first brought in a significant-connection state, that  
11 jurisdiction will be lost if a petition is later brought in the home state prior to an  
12 appointment or issuance of an order in the significant-connection state.  
13 Jurisdiction will also be lost in the significant-connection state if the respondent  
14 has a home state and an objection is filed in the significant-connection state that  
15 jurisdiction is properly in the home state. If petitions are brought in two  
16 significant-connection states, the first state has a right to proceed over that of the  
17 second state, and if a petition is brought in any other state, any claim to  
18 jurisdiction of that state is subordinate to that of the home state and all significant-  
19 connection states.  
20

21 Under this section, if the court has jurisdiction under Section 203, it has  
22 the right to proceed unless a court of another state acquires jurisdiction prior to the  
23 first court making an appointment or issuing a protective order. If the court does  
24 not have jurisdiction under Section 203, it must defer to the court with jurisdiction  
25 unless that court determines that the court in this state is the more appropriate  
26 forum and it thereby acquires jurisdiction. While the rules are straightforward,  
27 factual issues can arise as to which state is the home state or significant-  
28 connection state. Consequently, while under Section 203 there will almost always  
29 be a court having jurisdiction to proceed, reliance on the communication, court  
30 cooperation, and evidence gathering provisions of Sections 104-106 will  
31 sometimes be necessary to determine which court that might be.  
32

### 33 **SUBPART 3**

## 34 **TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP**

### 35 36 **General Comment**

37 While this article consists of two separate sections, they are part of one  
38 integrated procedure. Article 3 authorizes a guardian or conservator to petition the  
39 court to transfer the guardianship or conservatorship proceeding to a court of  
40 another state. Such a transfer is often appropriate when the incapacitated or  
41 protected person has moved or has been placed in a facility in another state,  
42

1 making it impossible for the original court to adequately monitor the proceeding.  
2 Article 3 authorizes a transfer of a guardianship, a conservatorship, or both. There  
3 is no requirement that both categories of proceeding be administered in the same  
4 state.

5  
6 Section 301 addresses procedures in the transferring state. Section 302  
7 addresses procedures in the accepting state.

8  
9 A transfer begins with the filing of a petition by the guardian or  
10 conservator as provided in Section 301(a). Notice of this petition must be given to  
11 the persons who would be entitled to notice were the petition a petition for an  
12 original appointment. Section 301(b). A hearing on the petition is required only if  
13 requested or on the court's own motion. Section 301(c). Assuming the court in the  
14 transferring state is satisfied that the grounds for transfer stated in Section 301(d)  
15 (guardianship) or 301(e) (conservatorship) have been met, one of which is that the  
16 court is satisfied that the court in the other state will accept the case, the court  
17 must issue a provisional order approving the transfer. The transferring court will  
18 not issue a final order dismissing the case until, as provided in Section 301(f), it  
19 receives a copy of the provisional order from the accepting court accepting the  
20 transferred proceeding.

21  
22 Following issuance of the provisional order by the transferring court, a  
23 petition must be filed in the accepting court as provided in Section 302(a). Notice  
24 of that petition must be given to those who would be entitled to notice of an  
25 original petition for appointment in both the transferring state and in the accepting  
26 state. Section 302(b). A hearing must be held only if requested or on the court's  
27 own motion. Section 302(c). The court must issue a provisional order accepting  
28 the case unless it is established that the transfer would be contrary to the  
29 incapacitated or protected person's interests or the guardian or conservator is  
30 ineligible for appointment in the accepting state. Section 302(d). The term  
31 "interests" as opposed to "best interests" was chosen because of the strong  
32 autonomy values in modern guardianship law. Should the court decline the  
33 transfer petition, it may consider a separately brought petition for the appointment  
34 of a guardian or issuance of a protective order only if the court has a basis for  
35 jurisdiction under Sections 203 or 204 other than by reason of the provisional  
36 order of transfer. Section 302(h).

37  
38 The final steps are largely ministerial. Pursuant to Section 301(f), the  
39 provisional order from the accepting court must be filed in the transferring court.  
40 The transferring court will then issue a final order terminating the proceeding,  
41 subject to local requirements such as filing of a final report or account and the  
42 release of any bond. Pursuant to Section 302(e), the final order terminating the  
43 proceeding in the transferring court must then be filed in the accepting court,  
44 which will then convert its provisional order accepting the case into a final order

1 appointing the petitioning guardian or conservator as guardian or conservator in  
2 the accepting state.  
3

4 Because guardianship and conservatorship law and practice will likely  
5 differ between the two states, the court in the accepting state must within 90 days  
6 after issuance of a final order determine whether the guardianship or  
7 conservatorship needs to be modified to conform to the law of the accepting state.  
8 Section 302(f). The number "90" is placed in brackets to encourage states to  
9 coordinate this time limit with the time limits for other required filings such as  
10 guardianship or conservatorship plans. This initial period in the accepting state is  
11 also an appropriate time to change the guardian or conservator if there is a more  
12 appropriate person to act as guardian or conservator in the accepting state. The  
13 drafters specifically did not try to design the procedures in Article 3 for the  
14 difficult problems that can arise in connection with a transfer when the guardian or  
15 conservator is ineligible to act in the second state, a circumstance that can occur  
16 when a financial institution is acting as conservator or a government agency is  
17 acting as guardian. Rather, the procedures in Article 3 are designed for the typical  
18 case where the guardian or conservator is legally eligible to act in the second state.  
19 Should that particular guardian or conservator not be the best person to act in the  
20 accepting state, a change of guardian or conservator can be initiated once the  
21 transfer has been secured.  
22

23 The transfer procedure in this article responds to numerous problems that  
24 have arisen in connection with attempted transfers under the existing law of most  
25 states. Sometimes a court will dismiss a case on the assumption a proceeding will  
26 be brought in another state, but such proceeding is never filed. Sometimes a court  
27 will refuse to dismiss a case until the court in the other state accepts the matter,  
28 but the court in the other state refuses to consider the petition until the already  
29 existing guardianship or conservatorship has been terminated. Oftentimes the  
30 court will conclude that it is without jurisdiction to make an appointment until the  
31 respondent is physically present in the state, a problem which Section 204(a)(3)  
32 addresses by granting a court special jurisdiction to consider a petition to accept a  
33 proceeding from another state. But the most serious problem is the need to prove  
34 the case in the second state from scratch, including proving the respondent's  
35 incapacity and the choice of guardian or conservator. Article 3 eliminates this  
36 problem. Section 302(g) requires that the court accepting the case recognize a  
37 guardianship or conservatorship order from the other state, including the  
38 determination of the incapacitated or protected person's incapacity and the  
39 appointment of the guardian or conservator, if otherwise eligible to act in the  
40 accepting state.  
41



1       **§5-531. Transfer of guardianship or conservatorship to another state**

2           (a). A guardian or conservator appointed in this State may petition the court to  
3           transfer the guardianship or conservatorship to another state.

4           (b). Notice of a petition under subsection (a) must be given to the persons that would  
5           be entitled to notice of a petition in this State for the appointment of a guardian or  
6           conservator.

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

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

14           (1). The incapacitated person is physically present in or is reasonably expected to  
15           move permanently to the other state;

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

19           (3). Plans for care and services for the incapacitated person in the other state are  
20           reasonable and sufficient.

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

25           (1). The protected person is physically present in or is reasonably expected to move  
26           permanently to the other state, or the protected person has a significant connection to  
27           the other state considering the factors in section 5-521, subsection (b);

28           (2). An objection to the transfer has not been made or, if an objection has been made,  
29           the objector has not established that the transfer would be contrary to the interests of  
30           the protected person; and

31           (3). Adequate arrangements will be made for management of the protected person's  
32           property.

33          (f). The court shall issue a final order confirming the transfer and terminating the  
34          guardianship or conservatorship upon its receipt of:

35           (1). A provisional order accepting the proceeding from the court to which the  
36           proceeding is to be transferred that is issued under provisions similar to section  
37           5-532; and

38           (2). The documents required to terminate a guardianship or conservatorship in this  
39           State.

1       **§5-532. Accepting guardianship or conservatorship transferred from another state**

2       **(a).** To confirm transfer of a guardianship or conservatorship transferred to this State  
3 under provisions similar to section 5-531, the guardian or conservator must petition the  
4 court in this State to accept the guardianship or conservatorship. The petition must  
5 include a certified copy of the other state's provisional order of transfer.

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

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

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

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

17           **(2).** The guardian or conservator is ineligible for appointment in this State.

18       **(e).** The court shall issue a final order accepting the proceeding and appointing the  
19 guardian or conservator as guardian or conservator in this State upon its receipt from the  
20 court from which the proceeding is being transferred of a final order issued under  
21 provisions similar to section 5-531 transferring the proceeding to this State.

22       **(f).** Not later than 90 days after issuance of a final order accepting transfer of a  
23 guardianship or conservatorship, the court shall determine whether the guardianship or  
24 conservatorship needs to be modified to conform to the law of this State.

25       **(g).** In granting a petition under this section, the court shall recognize a guardianship  
26 or conservatorship order from the other state, including the determination of the  
27 incapacitated person's or protected person's incapacity and the appointment of the  
28 guardian or conservator.

29       **(h).** The denial by a court of this State of a petition to accept a guardianship or  
30 conservatorship transferred from another state does not affect the ability of the guardian  
31 or conservator to seek appointment as guardian or conservator in this State under Part 3  
32 or 4 if the court has jurisdiction to make an appointment other than by reason of the  
33 provisional order of transfer.

34                               **SUBPART 4**

35       **REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES**

36  
37                               **General Comment**

1  
2 Article 4 is designed to facilitate the enforcement of guardianship and  
3 protective orders in other states. This article does not make distinctions among the  
4 types of orders that can be enforced. This article is applicable whether the  
5 guardianship or conservatorship is full or limited. While some states have  
6 expedited procedures for sales of real estate by conservators appointed in other  
7 states, few states have enacted statutes dealing with enforcement of guardianship  
8 orders, such as when a care facility questions the authority of a guardian appointed  
9 in another state. Sometimes, these sorts of refusals necessitate that the proceeding  
10 be transferred to the other state or that an entirely new petition be filed, problems  
11 that could often be avoided if guardianship and protective orders were entitled to  
12 recognition in other states.  
13

14 Article 4 provides for such recognition. The key concept is registration.  
15 Section 401 provides for registration of guardianship orders, and Section 402 for  
16 registration of protective orders. Following registration of the order in the  
17 appropriate county of the other state, and after giving notice to the appointing  
18 court of the intent to register the order in the other state, Section 403 authorizes  
19 the guardian or conservator to thereafter exercise all powers authorized in the  
20 order of appointment except as prohibited under the laws of the registering state.  
21

22 The drafters of the Act concluded that the registration of certified copies  
23 provides sufficient protection and that it was not necessary to mandate the filing of  
24 authenticated copies.  
25

26 **§5-541. Registration of guardianship**

27 If a guardian has been appointed in another state and a petition for the appointment of  
28 a guardian is not pending in this State, the guardian appointed in the other state, after  
29 giving notice to the appointing court of an intent to register, may register the guardianship  
30 order in this State by filing as a foreign judgment in a court, in any appropriate county of  
31 this State, certified copies of the order and letters of office.

32 **§5-542. Registration of protective orders**

33 If a conservator has been appointed in another state and a petition for a protective  
34 order is not pending in this State, the conservator appointed in the other state, after giving  
35 notice to the appointing court of an intent to register, may register the protective order in  
36 this State by filing as a foreign judgment in a court of this State, in any county in which  
37 property belonging to the protected person is located, certified copies of the order and  
38 letters of office and of any bond.

39 **§5-543. Effect of registration**

40 (a). Upon registration of a guardianship or protective order from another state, the  
41 guardian or conservator may exercise in this State all powers authorized in the order of

1 appointment except as prohibited under the laws of this State, including maintaining  
2 actions and proceedings in this State and, if the guardian or conservator is not a resident  
3 of this State, subject to any conditions imposed upon nonresident parties.

4 (b). A court of this State may grant any relief available under this Part and other law  
5 of this State to enforce a registered order.

## 6 **SUBPART 5**

### 7 **MISCELLANEOUS PROVISIONS**

#### 8 **§5-551. Uniformity of application and construction**

9 In applying and construing this Act, consideration must be given to the need to  
10 promote uniformity of the law with respect to its subject matter among states that enact it.

#### 11 **§5-552. Relation to Electronic Signatures in Global and National Commerce Act**

12 This Part modifies, limits and supersedes the federal Electronic Signatures in Global  
13 and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not  
14 modify, limit or supersede 15 United States Code, Section 7001(c) or authorize electronic  
15 delivery of any of the notices described in 15 United States Code, Section 7003(b).

#### 16 **§5-553. Transitional provisions**

17 (a). This Part applies to guardianship and protective proceedings begun on or after  
18 January 1, 2012.

19 (b). Subparts 1, 3 and 4 and sections 5-551 and 5-552 apply to proceedings begun  
20 before January 1, 2012, regardless of whether a guardianship or protective order has been  
21 issued.

## 22 **Comment**

23  
24  
25 (This is Section 504 of the Uniform Adult Guardianship and Protective  
26 Proceedings Jurisdiction Act.)  
27

28 This Act applies retroactively to guardianships and conservatorships in  
29 existence on the effective date. The guardian or conservator appointed prior to the  
30 effective date of the Act may petition to transfer the proceeding to another state  
31 under Article 3 and register and enforce the order in other states pursuant to  
32 Article 4. The jurisdictional provisions of Article 2 also apply to proceedings  
33 begun on or after the effective date. What the Act does not do is change the  
34 jurisdictional rules midstream for petitions filed prior to the effective date for  
35 which an appointment has not been made or order issued as of the effective date.  
36 Jurisdiction in such cases is governed by prior law. Nor does the Act affect the

1 validity of already existing appointments even though the court might not have  
2 had jurisdiction had this Act been in effect at the time the appointment was made.  
3

4 **§5-554. Effective date**

5 This Part takes effect January 1, 2012.

6 **SUMMARY**

7 This bill enacts the Uniform Adult Guardianship and Protective Proceedings  
8 Jurisdiction Act as a new Part of Article 5 of the Probate Code. The uniform comments  
9 adopted by the National Conference of Commissioners on Uniform State Laws are  
10 included.

11 The bill addresses the issue of jurisdiction over adult guardianships, conservatorships  
12 and other protective proceedings, providing an effective mechanism for resolving  
13 multistate jurisdictional disputes. It contains specific guidelines to specify which court  
14 has jurisdiction to appoint a guardian or conservator for an incapacitated adult. The  
15 objective is that only one state will have jurisdiction at any one time.

16 The bill takes effect January 1, 2012, but applies to all guardianships and  
17 conservatorships, including those created prior to that date.