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HOUSE BILL 1261

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State of Washington

61st Legislature

2009 Regular Session

By Representatives Goodman, Moeller, Green, Williams, Pedersen, Appleton, Morrell, and Ormsby; by request of Uniform Legislation Commission

Read first time 01/16/09. Referred to Committee on Judiciary.

1 AN ACT Relating to adult guardianship and protective proceedings  
2 jurisdiction; and adding a new chapter to Title 11 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** This chapter may be cited as the uniform  
5 adult guardianship and protective proceedings jurisdiction act.

6 NEW SECTION. **Sec. 2.** In this chapter:

7 (1) "Adult" means an individual who has attained eighteen years of  
8 age.

9 (2) "Conservator" means a person appointed by the court to  
10 administer the property of an adult.

11 (3) "Guardian" means a person appointed by the court to make  
12 decisions regarding the person of an adult.

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

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

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

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

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

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

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

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

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

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

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

24 NEW SECTION. **Sec. 3.** A court of this state may treat a foreign  
25 country as if it were a state for the purpose of applying this chapter.

26 NEW SECTION. **Sec. 4.** (1) A court of this state may communicate  
27 with a court in another state concerning a proceeding arising under  
28 this chapter. The court may allow the parties to participate in the  
29 communication. Except as otherwise provided in subsection (2) of this  
30 section, the court shall make a record of the communication. The  
31 record may be limited to the fact that the communication occurred.

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

34 NEW SECTION. **Sec. 5.** (1) In a guardianship or protective

1 proceeding in this state, a court of this state may request the  
2 appropriate court of another state to do any of the following:

3 (a) Hold an evidentiary hearing;

4 (b) Order a person in that state to produce evidence or give  
5 testimony pursuant to procedures of that state;

6 (c) Order that an evaluation or assessment be made of the  
7 respondent;

8 (d) Order any appropriate investigation of a person involved in a  
9 proceeding;

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

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

19 (g) Issue an order authorizing the release of medical, financial,  
20 criminal, or other relevant information in that state, including  
21 protected health information as defined in 45 C.F.R. Sec. 164.504.

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

27 NEW SECTION. **Sec. 6.** (1) In a guardianship or protective  
28 proceeding, in addition to other procedures that may be available,  
29 testimony of a witness who is located in another state may be offered  
30 by deposition or other means allowable in this state for testimony  
31 taken in another state. The court on its own motion may order that the  
32 testimony of a witness be taken in another state and may prescribe the  
33 manner in which and the terms upon which the testimony is to be taken.

34 (2) In a guardianship or protective proceeding, a court in this  
35 state may permit a witness located in another state to be deposed or to  
36 testify by telephone or audiovisual or other electronic means. A court

1 of this state shall cooperate with the court of the other state in  
2 designating an appropriate location for the deposition or testimony.

3 (3) Documentary evidence transmitted from another state to a court  
4 of this state by technological means that do not produce an original  
5 writing may not be excluded from evidence on an objection based on the  
6 best evidence rule.

7 NEW SECTION. **Sec. 7.** (1) In this chapter:

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

12 (b) "Home state" means the state in which the respondent was  
13 physically present, including any period of temporary absence, for at  
14 least six consecutive months immediately before the filing of a  
15 petition for a protective order or the appointment of a guardian; or if  
16 none, the state in which the respondent was physically present,  
17 including any period of temporary absence, for at least six consecutive  
18 months ending within the six months prior to the filing of the  
19 petition.

20 (c) "Significant-connection state" means a state, other than the  
21 home state, with which a respondent has a significant connection other  
22 than mere physical presence and in which substantial evidence  
23 concerning the respondent is available.

24 (2) In determining under sections 9 and 16(5) of this act whether  
25 a respondent has a significant connection with a particular state, the  
26 court shall consider:

27 (a) The location of the respondent's family and other persons  
28 required to be notified of the guardianship or protective proceeding;

29 (b) The length of time the respondent at any time was physically  
30 present in the state and the duration of any absence;

31 (c) The location of the respondent's property; and

32 (d) The extent to which the respondent has ties to the state such  
33 as voting registration, state or local tax return filing, vehicle  
34 registration, driver's license, social relationship, and receipt of  
35 services.

1        NEW SECTION.     **Sec. 8.**     This chapter provides the exclusive  
2 jurisdictional basis for a court of this state to appoint a guardian or  
3 issue a protective order for an adult.

4        NEW SECTION.     **Sec. 9.**     A court of this state has jurisdiction to  
5 appoint a guardian or issue a protective order for a respondent if:

6            (1) This state is the respondent's home state;

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

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

12            (b) The respondent has a home state, a petition for an appointment  
13 or order is not pending in a court of that state or another  
14 significant-connection state, and, before the court makes the  
15 appointment or issues the order:

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

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

20            (iii) The court in this state concludes that it is an appropriate  
21 forum under the factors set forth in section 12 of this act;

22            (3) This state does not have jurisdiction under either subsection  
23 (1) or (2) of this section, the respondent's home state and all  
24 significant-connection states have declined to exercise jurisdiction  
25 because this state is the more appropriate forum, and jurisdiction in  
26 this state is consistent with the constitutions of this state and the  
27 United States; or

28            (4) The requirements for special jurisdiction under section 10 of  
29 this act are met.

30        NEW SECTION.     **Sec. 10.**     (1) A court of this state lacking  
31 jurisdiction under section 9 of this act has special jurisdiction to do  
32 any of the following:

33            (a) Appoint a guardian in an emergency for a term not exceeding  
34 ninety days for a respondent who is physically present in this state;

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

1 (c) Appoint a guardian or conservator for an incapacitated or  
2 protected person for whom a provisional order to transfer the  
3 proceeding from another state has been issued under procedures similar  
4 to section 16 of this act.

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

11 NEW SECTION. **Sec. 11.** Except as otherwise provided in section 10  
12 of this act, a court that has appointed a guardian or issued a  
13 protective order consistent with this chapter has exclusive and  
14 continuing jurisdiction over the proceeding until it is terminated by  
15 the court or the appointment or order expires by its own terms.

16 NEW SECTION. **Sec. 12.** (1) A court of this state having  
17 jurisdiction under section 9 of this act to appoint a guardian or issue  
18 a protective order may decline to exercise its jurisdiction if it  
19 determines at any time that a court of another state is a more  
20 appropriate forum.

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

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

29 (a) Any expressed preference of the respondent;

30 (b) Whether abuse, neglect, or exploitation of the respondent has  
31 occurred or is likely to occur and which state could best protect the  
32 respondent from the abuse, neglect, or exploitation;

33 (c) The length of time the respondent was physically present in or  
34 was a legal resident of this or another state;

35 (d) The distance of the respondent from the court in each state;

36 (e) The financial circumstances of the respondent's estate;

1 (f) The nature and location of the evidence;

2 (g) The ability of the court in each state to decide the issue  
3 expeditiously and the procedures necessary to present evidence;

4 (h) The familiarity of the court of each state with the facts and  
5 issues in the proceeding; and

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

8 NEW SECTION. **Sec. 13.** (1) If at any time a court of this state  
9 determines that it acquired jurisdiction to appoint a guardian or issue  
10 a protective order because of unjustifiable conduct, the court may:

11 (a) Decline to exercise jurisdiction;

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

19 (c) Continue to exercise jurisdiction after considering:

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

23 (ii) Whether it is a more appropriate forum than the court of any  
24 other state under the factors set forth in section 12(3) of this act;  
25 and

26 (iii) Whether the court of any other state would have jurisdiction  
27 under factual circumstances in substantial conformity with the  
28 jurisdictional standards of section 9 of this act.

29 (2) If a court of this state determines that it acquired  
30 jurisdiction to appoint a guardian or issue a protective order because  
31 a party seeking to invoke its jurisdiction engaged in unjustifiable  
32 conduct, it may assess against that party necessary and reasonable  
33 expenses, including attorneys' fees, investigative fees, court costs,  
34 communication expenses, witness fees and expenses, and travel expenses.  
35 The court may not assess fees, costs, or expenses of any kind against  
36 this state or a governmental subdivision, agency, or instrumentality of  
37 this state unless authorized by law other than this act.

1        NEW SECTION.    **Sec. 14.**    If a petition for the appointment of a  
2 guardian or issuance of a protective order is brought in this state and  
3 this state was not the respondent's home state on the date the petition  
4 was filed, in addition to complying with the notice requirements of  
5 this state, notice of the petition must be given to those persons who  
6 would be entitled to notice of the petition if a proceeding were  
7 brought in the respondent's home state.    The notice must be given in  
8 the same manner as notice is required to be given in this state.

9        NEW SECTION.    **Sec. 15.**    Except for a petition for the appointment  
10 of a guardian in an emergency or issuance of a protective order limited  
11 to property located in this state under section 10(1) (a) or (b) of  
12 this act, if a petition for the appointment of a guardian or issuance  
13 of a protective order is filed in this state and in another state and  
14 neither petition has been dismissed or withdrawn, the following rules  
15 apply:

16        (1) If the court in this state has jurisdiction under section 9 of  
17 this act, it may proceed with the case unless a court in another state  
18 acquires jurisdiction under provisions similar to section 9 of this act  
19 before the appointment or issuance of the order.

20        (2) If the court in this state does not have jurisdiction under  
21 section 9 of this act, whether at the time the petition is filed or at  
22 any time before the appointment or issuance of the order, the court  
23 shall stay the proceeding and communicate with the court in the other  
24 state.    If the court in the other state has jurisdiction, the court in  
25 this state shall dismiss the petition unless the court in the other  
26 state determines that the court in this state is a more appropriate  
27 forum.

28        NEW SECTION.    **Sec. 16.**    (1) A guardian or conservator appointed in  
29 this state may petition the court to transfer the guardianship or  
30 conservatorship to another state.

31        (2) Notice of a petition under subsection (1) of this section must  
32 be given to the persons that would be entitled to notice of a petition  
33 in this state for the appointment of a guardian or conservator.

34        (3) On the court's own motion or on request of the guardian or  
35 conservator, the incapacitated or protected person, or other person



1 required to be notified of the petition, the court shall hold a hearing  
2 on a petition filed pursuant to subsection (1) of this section.

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

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

10 (b) An objection to the transfer has not been made or, if an  
11 objection has been made, the objector has not established that the  
12 transfer would be contrary to the interests of the incapacitated  
13 person; and

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

16 (5) The court shall issue a provisional order granting a petition  
17 to transfer a conservatorship and shall direct the conservator to  
18 petition for conservatorship in the other state if the court is  
19 satisfied that the conservatorship will be accepted by the court of the  
20 other state and the court finds that:

21 (a) The protected person is physically present in or is reasonably  
22 expected to move permanently to the other state, or the protected  
23 person has a significant connection to the other state considering the  
24 factors in section 7(2) of this act;

25 (b) An objection to the transfer has not been made or, if an  
26 objection has been made, the objector has not established that the  
27 transfer would be contrary to the interests of the protected person;  
28 and

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

31 (6) The court shall issue a final order confirming the transfer and  
32 terminating the guardianship or conservatorship upon its receipt of:

33 (a) A provisional order accepting the proceeding from the court to  
34 which the proceeding is to be transferred which is issued under  
35 provisions similar to section 17 of this act; and

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

1        NEW SECTION.    **Sec. 17.**    (1) To confirm transfer of a guardianship  
2 or conservatorship transferred to this state under provisions similar  
3 to section 16 of this act, the guardian or conservator must petition  
4 the court in this state to accept the guardianship or conservatorship.  
5 The petition must include a certified copy of the other state's  
6 provisional order of transfer.

7        (2) Notice of a petition under subsection (1) of this section must  
8 be given to those persons that would be entitled to notice if the  
9 petition were a petition for the appointment of a guardian or issuance  
10 of a protective order in both the transferring state and this state.  
11 The notice must be given in the same manner as notice is required to be  
12 given in this state.

13        (3) On the court's own motion or on request of the guardian or  
14 conservator, the incapacitated or protected person, or other person  
15 required to be notified of the proceeding, the court shall hold a  
16 hearing on a petition filed pursuant to subsection (1) of this section.

17        (4) The court shall issue an order provisionally granting a  
18 petition filed under subsection (1) of this section unless:

19        (a) An objection is made and the objector establishes that transfer  
20 of the proceeding would be contrary to the interests of the  
21 incapacitated or protected person; or

22        (b) The guardian or conservator is ineligible for appointment in  
23 this state.

24        (5) The court shall issue a final order accepting the proceeding  
25 and appointing the guardian or conservator as guardian or conservator  
26 in this state upon its receipt from the court from which the proceeding  
27 is being transferred of a final order issued under provisions similar  
28 to section 16 of this act transferring the proceeding to this state.

29        (6) Not later than ninety days after issuance of a final order  
30 accepting transfer of a guardianship or conservatorship, the court  
31 shall determine whether the guardianship or conservatorship needs to be  
32 modified to conform to the law of this state.

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

37        (8) The denial by a court of this state of a petition to accept a  
38 guardianship or conservatorship transferred from another state does not

1 affect the ability of the guardian or conservator to seek appointment  
2 as guardian or conservator in this state if the court has jurisdiction  
3 to make an appointment other than by reason of the provisional order of  
4 transfer.

5 NEW SECTION. **Sec. 18.** If a guardian has been appointed in another  
6 state and a petition for the appointment of a guardian is not pending  
7 in this state, the guardian appointed in the other state, after giving  
8 notice to the appointing court of an intent to register, may register  
9 the guardianship order in this state by filing as a foreign judgment in  
10 a court, in any appropriate county of this state, certified copies of  
11 the order and letters of office.

12 NEW SECTION. **Sec. 19.** If a conservator has been appointed in  
13 another state and a petition for a protective order is not pending in  
14 this state, the conservator appointed in the other state, after giving  
15 notice to the appointing court of an intent to register, may register  
16 the protective order in this state by filing as a foreign judgment in  
17 a court of this state, in any county in which property belonging to the  
18 protected person is located, certified copies of the order and letters  
19 of office and of any bond.

20 NEW SECTION. **Sec. 20.** (1) Upon registration of a guardianship or  
21 protective order from another state, the guardian or conservator may  
22 exercise in this state all powers authorized in the order of  
23 appointment except as prohibited under the laws of this state,  
24 including maintaining actions and proceedings in this state and, if the  
25 guardian or conservator is not a resident of this state, subject to any  
26 conditions imposed upon nonresident parties.

27 (2) A court of this state may grant any relief available under this  
28 act and other law of this state to enforce a registered order.

29 NEW SECTION. **Sec. 21.** In applying and construing this uniform  
30 act, consideration must be given to the need to promote uniformity of  
31 the law with respect to its subject matter among states that enact it.

32 NEW SECTION. **Sec. 22.** This act modifies, limits, and supersedes  
33 the federal electronic signatures in global and national commerce act,

1 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede  
2 section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic  
3 delivery of any of the notices described in section 103(b) of that act,  
4 15 U.S.C. Sec. 7003(b).

5 NEW SECTION. **Sec. 23.** (1) This act applies to guardianship and  
6 protective proceedings begun on or after the effective date of this  
7 act.

8 (2) Sections 1 through 6 and 16 through 22 apply to proceedings  
9 filed on or after January 1, 2010, regardless of whether a guardianship  
10 or protective order has been issued.

11 NEW SECTION. **Sec. 24.** Sections 1 through 23 of this act  
12 constitute a new chapter in Title 11 RCW.

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