
Judiciary Committee

HB 1261

Title: An act relating to adult guardianship and protective proceedings jurisdiction.

Brief Description: Enacting the adult guardianship and protective proceedings jurisdiction act.

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

Brief Summary of Bill

- Adopts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, which establishes procedures for resolving interstate jurisdictional issues surrounding guardianship proceedings.
- Provides a process for communication and cooperation between courts in different states.
- Specifies standards for establishing the state court with primary jurisdiction.
- Creates a process for transferring jurisdiction to another state.
- Allows recognition and enforcement of out-of-state orders.

Hearing Date: 1/21/09

Staff: Edie Adams (786-7180)

Background:

Guardianship Proceedings

Guardianship is a legal process through which a guardian is given the power to make decisions for a person who is determined to be "incapacitated" and therefore unable to take care of himself or herself. A person may be incapacitated if the individual is at a significant risk of financial harm because of an inability to manage his or her property or finances or has a significant risk of personal harm because of an inability to provide for nutrition, health, housing or physical safety.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The court may establish a guardianship over the person, the person's estate, or both. The court may also establish a limited guardianship for persons who need protection or assistance because of an incapacity, but who are capable of managing some of their affairs. A guardian of an incapacitated person's estate is responsible for managing the persons' property and finances. A guardian of the person is responsible for assessing and meeting the person's physical, mental and emotional needs.

Adult Guardianship and Protective Proceedings Jurisdiction Act

The National Conference of Commissioners on Uniform State Laws (NCCUSL) is an organization that authors and promotes enactment of uniform state laws in areas of law where national uniformity is desirable and practical. In 2006 the NCCUSL adopted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act to establish procedures for addressing interstate jurisdictional, transfer and enforcement issues relating to adult guardianship and protective proceedings.

Summary of Bill:

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (act) is adopted. The act establishes standards for determining the state court with primary jurisdiction over guardianship and protective proceedings, procedures for communication and cooperation between state courts, methods for transferring jurisdiction to another state, and recognition and enforcement of out-of-state orders. A "guardianship proceeding" is a proceeding for the appointment of a guardian to make decisions regarding the person of an adult (respondent). A "protective proceeding" is a proceeding to appoint a conservator to administer the property of a person.

Communication and Cooperation Between Courts

Procedures for allowing communication and cooperation between state courts are provided. A Washington court may communicate with a court of another state, and with the parties, concerning a guardianship or protective proceeding. A Washington court involved in a guardianship or protective proceeding may request the court of another state to take certain action, such as holding an evidentiary hearing, ordering a person in the other state to produce evidence or give testimony, or ordering that an evaluation or assessment be made of the respondent. A Washington court has jurisdiction to grant a request for assistance from a court of another state involved in a guardianship or protective proceeding.

When a witness is located in another state, the court may order the testimony of the witness to be taken in another state and the witness's testimony may be offered by deposition. The court may permit a witness located in another state to be deposed or testify by telephone or audiovisual or other electronic means.

Jurisdiction

Procedures are established for resolving interstate jurisdictional issues in guardianship and protective proceedings. Primary jurisdiction over these proceedings rests in the “home state,” followed by a state in which the respondent has a “significant connection.”

A “home state” means the state in which the respondent is physically present for at least six consecutive months immediately before the filing of the petition. A “significant-connection state” is a state with which the respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available. Factors for determining a significant connection are provided and include: the length of time the respondent has been present in the state; the location of family and property; and other ties to the state, such as voting registration or vehicle registration.

A significant-connection state may exercise jurisdiction if: (1) there is no home state; (2) the home state has declined to exercise jurisdiction; or (3) no action has been filed in the home state or another significant-connection state, no objection to the court's jurisdiction has been filed, and the court is a more appropriate forum than a court in another state.

A state that is not a home state or a significant-connection state may exercise jurisdiction if the home state and significant-connection states have declined to exercise jurisdiction because the state is a more appropriate forum.

Regardless of these jurisdictional requirements, a court in a state where the respondent is physically present may appoint a temporary guardian in an emergency, and a court in a state where an individual's property is located has jurisdiction to appoint a conservator or issue a protective order concerning the property.

Additional procedures are established for resolving jurisdictional issues if proceedings are pending in more than one state and for declining jurisdiction if the court determines there is a more appropriate forum or if jurisdiction was acquired through unjustifiable conduct.

Transfer of Guardianship Cases

A process is created for transferring a guardianship or conservatorship to another state. A Washington court may transfer a guardianship or conservatorship to another state if the court is satisfied the guardianship or conservatorship will be accepted by the other state, the incapacitated or protected person is expected to move to the other state, and adequate arrangements for the person's care or management of the person's property have been made in the other state. The court may order the transfer after receiving a provisional order of acceptance from the court receiving the transfer.

A Washington court may accept a transfer of a guardianship or conservatorship from another state unless the transfer of the case would be contrary to the interests of the incapacitated or protected person, or the guardian or conservator is ineligible for appointment in Washington.

When a guardianship or conservatorship is transferred, the court accepting the transfer must recognize the order from the other state, including the determination of incapacity and the appointment of the guardian or conservator.

Registration and Enforcement of Out-of-State Orders

A guardian or conservator appointed in another state may register the guardianship or protective order in an appropriate Washington court by filing the order as a foreign judgment.

Once registered, the guardian or conservator may exercise in Washington all powers authorized in the order of appointment, unless prohibited by Washington law, including maintaining actions or proceedings in Washington courts. A Washington court may grant any relief available under Washington law to enforce a registered order.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.