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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO PROBATE PRACTICE AND PROCEDURE -- UNIFORM ADULT  
GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

Introduced By: Representative Robert E. Craven

Date Introduced: February 27, 2014

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 33 of the General Laws entitled "PROBATE PRACTICE AND  
2 PROCEDURE" is hereby amended by adding thereto the following chapter:

3 CHAPTER 15.2

4 UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION

5 ACT

6 **33-15.2-1. Short Title.--** This chapter shall be known and may be cited as the "Uniform  
7 Adult Guardianship and Protective Proceedings Jurisdiction Act."

8 **33-15.2-2. Definitions.--** In this chapter:

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

10 (2) "Conservator" means a person appointed by the court to administer the property of an  
11 adult, including a person appointed under title 33.

12 (3) "Emergency" means circumstances that likely will result in substantial harm to a  
13 respondent's health, safety, or welfare, and in which the appointment of a guardian is necessary  
14 because no other person possesses the authority to, and is willing to act on the respondents behalf.

15 (4) "Guardian" means a person appointed by the court to make decisions regarding the  
16 person of an adult, including a person appointed under title 33.

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

18 (6) "Guardianship proceeding" means a proceeding in which an order for the appointment

1 of a guardian is sought or has been issued.

2 (7) "Home state" means the state in which the respondent was physically present for at  
3 least six (6) consecutive months immediately before the filing of a petition for the appointment of  
4 a guardian or protective order. A period of temporary absence counts as part of the six-month  
5 period.

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

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

9 (10) "Person" means an individual, corporation, business trust, estate, trust, partnership,  
10 limited liability company, association, joint venture, government or governmental subdivision,  
11 agency, or instrumentality, public corporation, or any other legal or commercial entity.

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

13 (12) "Protective order" means an order appointing a conservator or another court order  
14 related to management of an adult's property.

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

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

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

21 (16) "Significant-connection state" means a state, other than the home state, with which a  
22 respondent has a significant connection other than mere physical presence and in which  
23 substantial evidence concerning the respondent is available. Determination of whether a  
24 respondent has a significant connection with a particular state shall include consideration of the  
25 following factors:

26 (A) The location of the respondent's family and others required to be notified of the  
27 guardianship or protective proceeding;

28 (B) The length of time the respondent at any time was physically present in the state and  
29 the duration of any absences;

30 (C) The location of the respondent's property; and

31 (D) The extent to which the respondent has other ties to the state such as voting  
32 registration, filing of state or local tax returns, vehicle registration, driver's license, social  
33 relationships, and receipt of services.

34 (16) "State" means a state of the United States, the District of Columbia, Puerto Rico, the

1 United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular  
2 possession subject to the jurisdiction of the United States.

3 **33-15.2-3. International application of chapter.--** A court of this state may treat a  
4 foreign country as if it were a state for the purpose of this chapter.

5 **33-15.2-4. Communication between courts. --** (a) A court of this state may  
6 communicate with a court in another state concerning a proceeding arising under this chapter.  
7 The court may allow the parties to participate in the communication. Except as otherwise  
8 provided in subsection (b) of this section, the court shall make a record of the communication.  
9 The record may be limited to the fact that the communication occurred.

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

12 **33-15.2-5. Corporation between courts. --** (a) In a guardianship or protective co-op  
13 proceeding in this state, a court of this state may request the appropriate court of another state to:

14 (1) Hold an evidentiary hearing;

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

17 (3) Order that an evaluation or assessment be made of the respondent, or order any  
18 appropriate investigation of a person involved in a proceeding;

19 (4) Forward to the court of this state a certified copy of the transcript or other record of a  
20 hearing under subsection (1) of this section or any other proceeding, any evidence otherwise  
21 presented under subsection (2) of this section, and any evaluation or assessment prepared in  
22 compliance with the request under subsection (3) of this section;

23 (5) Issue any other order necessary to assure the appearance of a person necessary to  
24 make a determination, including the respondent or the incapacitated or protected person; and

25 (6) Issue an order authorizing the release of medical, financial, criminal, or other relevant  
26 information in that state, including protected health information as defined in 45 Code of Federal  
27 Regulations Section 164.504.

28 (b) If a court of another state in which a guardianship or protective proceeding is pending  
29 requests assistance of the kind provided in § 33-15.2-5 (a), a court of this state has jurisdiction for  
30 the limited purpose of granting the request or making reasonable efforts to comply with the  
31 request.

32 **33-15.2-6. Taking testimony in another state. --** (a) In a guardianship or protective  
33 proceeding, in addition to other procedures that may be available, testimony of witnesses who are  
34 located in another state may be offered by deposition or other means allowable in this state for

1 testimony taken in another state. The court on its own motion may order that the testimony of a  
2 witness be taken in another state and may prescribe the manner in which and the terms upon  
3 which the testimony is to be taken.

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

8 (c) Documentary evidence transmitted from another state to a court of this state by  
9 technological means that do not produce an original writing may not be excluded from evidence  
10 on an objection based on the means of transmission.

11 **33-15.2-7. Exclusive basis.** -- This chapter, provides the exclusive jurisdictional basis for  
12 a court of this state to appoint a guardian or issue a protective order for an adult.

13 **33-15.2-8. Initial jurisdiction.** -- In addition to the limited or special jurisdiction under a  
14 court of this state all courts of this state shall have jurisdiction to appoint a guardian or issue a  
15 protective order for a respondent if:

16 (1) This state was the respondent's home state on the date a petition for the appointment  
17 of a guardian or protective order was filed, or was the home state of the respondent within six (6)  
18 months before the date the petition was filed;

19 (2) This state is a significant-connection state and:

20 (A) The respondent did not have a home state on the date the petition was filed or within  
21 six (6) months before the petition was filed, or a court of that state has declined to exercise  
22 jurisdiction under its authority because this state is a more appropriate forum; or

23 (B) A petition for the appointment of a guardian or protective order has not been filed in  
24 a court having jurisdiction under subsection (1) of this section or in another significant-  
25 connection state, an objection to the jurisdiction of the court in this state has not been filed, and  
26 the court in this state concludes that it is an appropriate forum under the factors set forth in § 33-  
27 15.2-11; or

28 (3) This state was not the home state on the date the petition was filed or within six (6)  
29 months before the petition was filed, nor was this state a significant-connection state, and all such  
30 states have declined to exercise jurisdiction under this chapter because this state is the more  
31 appropriate forum or no court has jurisdiction under subsections (1) or (2) of this section, and  
32 jurisdiction in this state is consistent with the constitutions of this state and the United States.

33 **33-15.2-9. Special cases.** -- (a) A court of this state lacking jurisdiction pursuant to initial  
34 jurisdiction under § 33-15.2-8 has jurisdiction to do any of the following:

1           (1) Appoint a guardian in an emergency for a term not exceeding ninety (90) days for a  
2 respondent who is physically located in this state;

3           (2) Issue a protective order with respect to real or tangible personal property located in  
4 this state;

5           (3) Appoint a guardian or conservator for an incapacitated or protected person for whom  
6 a provisional order to transfer the proceeding from another state has been issued as provided in §  
7 33-15.2-15.

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

13           **33-15.2-10. Exclusive and continuing jurisdiction.--** Except as otherwise provided in §  
14 33-15.2-9, a court that has appointed a guardian or issued a protective order consistent with this  
15 chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the  
16 court or the appointment or order expires by its own terms.

17           **33-15.2-11. Declining jurisdiction if another court is a more appropriate forum.--**  
18 (a) A court of this state having jurisdiction here under § 33-15.5-8 to appoint a guardian or issue a  
19 protective order may decline to exercise its jurisdiction if it determines at any time that a court of  
20 another state is a more appropriate forum.

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

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

28           (1) Any expressed preference of the respondent;

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

31           (3) The length of time the respondent was physically located in or was a legal resident of  
32 this or another state;

33           (4) The distance of the respondent from the court in each state;

34           (5) The financial circumstances of the respondent's estate;

- 1           (6) The nature and location of the evidence;  
2           (7) The ability of the court in each state to decide the issue expeditiously and the  
3 procedures necessary to present evidence;  
4           (8) The familiarity of the court of each state with the facts and issues in the proceeding;  
5 and  
6           (9) If an appointment were made, the court's ability to monitor the conduct of the  
7 guardian or conservator.

8           **33-15.2-12. Jurisdiction declined by reason of conduct. --** (a) If at any time a court of  
9 this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order  
10 because of unjustifiable conduct, the court may:

- 11           (1) Decline to exercise jurisdiction;  
12           (2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to  
13 ensure the health, safety, and welfare of the respondent or the protection of the respondent's  
14 property or prevent a repetition of the unjustifiable conduct, including staying the proceeding  
15 until a petition for the appointment of a guardian or protective order is filed in a court of another  
16 state having jurisdiction; or  
17           (3) Continue to exercise jurisdiction after considering:  
18           (i) The extent to which the respondent and all persons required to be notified of the  
19 proceedings have acquiesced in the exercise of the court's jurisdiction;  
20           (ii) Whether it is a more appropriate forum than the court of any other state under the  
21 factors set forth in § 33-15.2-11(c); and  
22           (iii) Whether the court of any other state would have jurisdiction under factual  
23 circumstances in substantial conformity with the jurisdictional standards of § 33-15.2-8.

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

31           **33-15.2-13. Notice of proceeding --** If a petition for the appointment of a guardian or  
32 issuance of a protective order is brought in this state and this state was not the respondent's home  
33 state on the date a petition for the appointment of a guardian or protective order was filed, or  
34 within six (6) months before the date the petition was filed, in addition to complying with the

1 notice requirements of this state, notice of the proceeding must be given by the petitioner to those  
2 persons who would be entitled to notice of the petition if the proceeding were brought in such  
3 other state, if any. The notice must be given in the same manner as notice is given in this state.

4 **33-15.2-14. Proceedings in more than one state.--** Except for a petition for the  
5 appointment of a guardian in an emergency or a protective order limited to property located in  
6 this state as provided in § 33-15.2-9, if a petition for the appointment of a guardian or protective  
7 order is filed in this and another state and neither petition has been dismissed or withdrawn, the  
8 following rules apply:

9 (1) If the court in this state has jurisdiction under § 33-15.2-8, it may proceed with the  
10 case unless a court in another state acquires jurisdiction under § 33-15.2-8 before the appointment  
11 or issuance of the order.

12 (2) If the court in this state does not have jurisdiction under § 33-15.2-8, whether at the  
13 time the petition is filed or at any time before the appointment or issuance of the order, the court  
14 shall stay the proceeding and communicate with the court in the other state. If the court in the  
15 other state does not determine that the court in this state is a more appropriate forum, the court in  
16 this state shall dismiss the petition.

17 **33-15.2-15. Petition to transfer jurisdiction to another state.--** (a) Following the  
18 appointment of a guardian or conservator, the guardian or conservator may petition the court to  
19 transfer the guardianship or conservatorship to another state.

20 (b) Notice of the petition to transfer a guardianship or conservatorship under subsection  
21 (a) must be given by the petitioner to those persons that would be entitled to notice of a petition in  
22 this state for the appointment of a guardian or conservator.

23 (c) On the court's own motion or on request of the incapacitated or protected person, or  
24 another interested person, the court shall hold a hearing on a petition filed pursuant to subsection  
25 (a).

26 (d) The court shall issue a provisional order granting a petition to transfer a guardianship  
27 if the court finds that:

28 (1) The incapacitated person is physically located in or is reasonably expected to move  
29 permanently to the other state;

30 (2) An objection to the transfer has not been made or, if an objection has been made, the  
31 objector has not established that the transfer would be contrary to the interests of the  
32 incapacitated person;

33 (3) The court is satisfied that plans for care and services for the incapacitated person in  
34 the other state are reasonable and sufficient; and

1           (4) The court is satisfied that the guardianship will be accepted by the court to which the  
2 proceeding will be transferred.

3           (e) The court shall issue a provisional order granting a petition to transfer a  
4 conservatorship if the court finds that:

5           (1) The protected person is physically located in or is reasonably expected to move  
6 permanently to the other state, or the protected person has a significant connection to the other  
7 state considering the factors set forth in this chapter.

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

11           (3) The court is satisfied that adequate arrangements will be made for management of the  
12 protected person 's property; and

13           (4) The court is satisfied that the conservatorship will be accepted by the court to which  
14 the proceeding will be transferred.

15           **33-15.2-16. Petition to accept proceeding transferred from another state.--** (a) Upon  
16 issuance of a provisional order in another state to transfer a guardianship or conservatorship to  
17 this state under procedures similar to those in § 33-15.2-15, the guardian or conservator shall  
18 petition the court in this state to accept the guardianship or conservatorship. The petition must  
19 include a certified copy of the other state's provisional order.

20           (b) Notice of a petition under subsection (a) to accept a guardianship or conservatorship  
21 from another state must be given by the petitioner to those persons that would be entitled to  
22 notice if the petition were a petition for the appointment of a guardian or issuance of a protective  
23 order in both the transferring state and this state. The notice must be given in the same manner as  
24 notice is given in this state.

25           (c) On the court's own motion or on request of the incapacitated or protected person, or  
26 another interested person, the court shall hold a hearing on a petition filed pursuant to subsection  
27 (a) to accept a guardianship or conservatorship from another state.

28           (d) The court shall issue a provisional order approving a petition filed under subsection  
29 (a) unless an objection is made and the objector establishes that transfer of the proceeding would  
30 be contrary to the interests of the incapacitated or protected person.

31           (e) In approving a petition under this section, the court shall recognize a guardianship or  
32 conservatorship order from the other state, including the determination of the incapacitated or  
33 protected person's incapacity and the appointment of the guardian or conservator, if the guardian  
34 or conservator is eligible to act in this state.

1           (f) The denial of a petition filed under subsection (a) of this section to accept a  
2 guardianship or conservatorship from another state does not affect the ability of a guardian or  
3 conservator appointed by a court in another state to seek appointment as guardian of the  
4 incapacitated person or conservator of the protected person under this title.

5           **33-15.2-17. Final order in transferring state.--** Upon receipt from the court of the other  
6 state of a provisional order issued under § 33-15.2-16 to accept a guardianship or conservatorship  
7 transferred under § 33-15.2-15 and the filing of the documents required in this state to terminate a  
8 guardianship or conservatorship, the court shall issue an order confirming the transfer of the  
9 proceeding to the other state and terminating the guardianship or conservatorship in this state.

10           **33-15.2-18. Final order in accepting state; Judicial review.--** (a) Upon receipt of an  
11 order issued under § 33-15.2-17 confirming the transfer of a guardianship or conservatorship  
12 proceeding to this state and terminating the guardianship or conservatorship in the transferring  
13 state, the court shall issue a final order appointing the guardian or conservator as guardian or  
14 conservator in this state.

15           (b) Within ninety (90) days after issuance of a final order accepting a guardianship or  
16 conservatorship transferred from another state, the court shall determine whether the guardianship  
17 or conservatorship need be modified to conform to the law of this state.

18           **33-15.2-19. Registration of guardianship orders.--** If a guardian has not been appointed  
19 in this state and a petition for the appointment of a guardian is not pending in this state, a  
20 guardian appointed in another state, after giving notice to the appointing court of an intent to  
21 register, may register the guardianship order in this state by filing as a foreign judgment in a court  
22 of this state certified copies of the order and letters of office.

23           **33-15.2-20. Registration of protective orders.--** If a conservator has not been appointed  
24 in this state and a petition for a protective order is not pending in this state, a conservator  
25 appointed in another state, after giving notice to the appointing court of an intent to register, may  
26 register the protective order in this state by filing as a foreign judgment in a court of this state, in  
27 any municipality which property belonging to the protected person is located, certified copies of  
28 the order and letters of office and of any bond.

29           **33-15.2-21. Effect Registration of protective orders.--** (a) Upon registration of a  
30 guardianship or protective order from another state, the guardian or conservator may exercise in  
31 this state all powers authorized in the order of appointment except as prohibited under the laws of  
32 this state, including maintaining actions and proceedings in this state and, if the guardian or  
33 conservator is not a resident of this state, subject to any conditions imposed upon nonresident  
34 parties.

1           **(b) A court of this state may grant any relief available under this chapter and other laws**  
2 **of this state to enforce a registered order.**

3           **33-15.2-22. Uniformity of application and construction. -- In applying and construing**  
4 **this uniform act, consideration must be given to the need to promote uniformity of the law with**  
5 **respect to its subject matter among states that enact it.**

6           **33-15.2-23. Relation to electronic signatures in global and national commerce act.--**  
7 **This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and**  
8 **National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede Section**  
9 **101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices**  
10 **described in Section 103(b) of that act, 15 U.S.C. 7003(b).**

11           SECTION 2. This act shall take effect upon passage and shall only apply to guardianship  
12 and protective proceedings begun on or after the effective date.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO PROBATE PRACTICE AND PROCEDURE -- UNIFORM ADULT  
GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

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1           This act would create the "Uniform Adult Guardianship and Protective Proceedings  
2   Jurisdiction Act" which provides for the communication and assistance between courts of  
3   different states in insuring the appearance and/or testimony of people necessary to make certain  
4   determinations by the respective courts and would further provide for the transferal of certain  
5   court orders relative to guardianship protection or conservatorship.

6           This act would take effect upon passage and would only apply to guardianship and  
7   protective proceedings begun on or after the effective date.

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