

2014 -- S 2548

=====
LC004890
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

—————
A N A C T

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

Introduced By: Senators McCaffrey, Lombardo, and Lynch

Date Introduced: February 27, 2014

Referred To: Senate 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 ARTICLE 1 -- GENERAL PROVISIONS:

7 **33-15.2-101. Short title.** -- This chapter shall be known and may be cited as the
8 "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act."

9 **33-15.2-102. Definitions.** – As used in this chapter:

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

11 (2) "Conservator" means a person appointed by the court to administer the property of an
12 adult, including a person appointed under chapter 33-15.

13 (3) "Guardian" means a person appointed by the court to make decisions regarding the
14 person of an adult, including a person appointed under chapter 33-15.

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

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

18 (6) "Home state" means the state in which the respondent was physically present for at

1 least six (6) consecutive months immediately before the filing of a petition for the appointment of
2 a guardian or protective order. A period of temporary absence counts as part of the six (6) month
3 period.

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

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

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

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

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

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

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

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

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

24 (i) The location of the respondent's family and others required to be notified of the
25 guardianship or protective proceeding;

26 (ii) The length of time the respondent at any time was physically present in the state and
27 the duration of any absences;

28 (iii) The location of the respondent's property; and

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

33-15.2-103. International application of chapter. -- A court of this state may treat a foreign country as if it were a state for the purpose of applying Articles 1, 2, 3, and 5.

33-15.2-104. Communication between courts. -- (a) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

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

33-15.2-105. 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:

- (1) Hold an evidentiary hearing;
- (2) Order a person in that state to produce or give evidence pursuant to procedures of that state;
- (3) Order that an evaluation or assessment be made of the respondent, or order any appropriate investigation of a person involved in a proceeding;
- (4) Forward to the court of this state a certified copy of the transcript or other record of a hearing under subsection (1) of this section or any other proceeding, any evidence otherwise presented under subsection (2) of this section, and any evaluation or assessment prepared in compliance with the request under subsection (3) of this section;
- (5) Issue any other order necessary to assure the appearance of a person necessary to make a determination, including the respondent or the incapacitated or protected person; and
- (6) 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 C.F.R. 164-504, 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) of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

33-15.2-106. Taking testimony in another state. -- (a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of witnesses who are located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a

1 witness be taken in another state and may prescribe the manner in which and the terms upon
2 which the testimony is to be taken.

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

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

10 ARTICLE 2 -- JURISDICTION:

11 **33-15.2-201. Definition.** -- As used in this chapter:

12 (1) "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 has authority to and is willing to act on the respondent's behalf.

15 **33-15.2-202. Exclusive basis.** -- This chapter provides the exclusive jurisdictional basis
16 for a court of this state to appoint a guardian or issue a protective order for an adult.

17 **33-15.2-203. Initial jurisdiction.** -- In addition to the limited or special jurisdiction
18 under § 35-15.2-204, a court of this state has jurisdiction to appoint a guardian or issue a
19 protective order for a respondent if:

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

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

24 (i) The respondent did not have a home state on the date the petition was filed or within
25 six (6) months before the petition was filed, or a court of that state has declined to exercise
26 jurisdiction under section § 35-15.2-206 because this state is a more appropriate forum; or

27 (ii) A petition for the appointment of a guardian or protective order has not been filed in a
28 court having jurisdiction under subsection (1) of this section or in another significant-connection
29 state, an objection to the jurisdiction of the court in this state has not been filed, and the court in
30 this state concludes that it is an appropriate forum under the factors set forth in § 35-15.2-206; or

31 (3) This state was not the home state on the date the petition was filed or within six (6)
32 months before the petition was filed, nor was this state a significant-connection state, and all such
33 states have declined to exercise jurisdiction under § 35-15.2-206 because this state is the more
34 appropriate forum or no court has jurisdiction under subsection (1) or (2) of this section, and

1 jurisdiction in this state is consistent with the constitutions of this state and the United States.

2 **33-15.2-204. Special cases.** -- (a) A court of this state lacking jurisdiction under § 33-
3 15.2-203 has jurisdiction to do any of the following:

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

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

8 (3) Appoint a guardian or conservator for an incapacitated or protected person for whom
9 a provisional order to transfer the proceeding from another state has been issued as provided in §
10 33-15.2-301.

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

16 **33-15.2-205. Exclusive and continuing jurisdiction.** -- Except as otherwise provided in
17 § 33-15.2-204, a court that has appointed a guardian or issued a protective order consistent with
18 this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by
19 the court or the appointment or order expires by its own terms.

20 **33-15.2-206. Declining jurisdiction if another court is a more appropriate forum.** --
21 (a) A court of this state having jurisdiction under § 33-15.2-203 to appoint a guardian or issue a
22 protective order may decline to exercise its jurisdiction if it determines at any time that a court of
23 another state is a more appropriate forum.

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

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

31 (1) Any expressed preference of the respondent;

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

34 (3) The length of time the respondent was physically located in or was a legal resident of

1 this or another state;

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

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

4 (6) The nature and location of the evidence;

5 (7) The ability of the court in each state to decide the issue expeditiously and the
6 procedures necessary to present evidence;

7 (8) The familiarity of the court of each state with the facts and issues in the proceeding;

8 and

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

11 **33-15.2-207. Jurisdiction declined by reason of conduct.** -- (a) If at any time a court of
12 this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order
13 because of unjustifiable conduct, the court may:

14 (1) Decline to exercise jurisdiction;

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

20 (3) Continue to exercise jurisdiction after considering:

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

23 (ii) Whether it is a more appropriate forum than the court of any other state under the
24 factors set forth in § 33-15.2-206(c); and

25 (iii) Whether the court of any other state would have jurisdiction under factual
26 circumstances in substantial conformity with the jurisdictional standards of § 33-15.2-203.

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

34 **33-15.2-208. Notice of proceeding.** -- If a petition for the appointment of a guardian or

1 issuance of a protective order is brought in this state and this state was not the respondent's home
2 state on the date a petition for the appointment of a guardian or protective order was filed, or
3 within six (6) months before the date the petition was filed, in addition to complying with the
4 notice requirements of this state, notice of the proceeding must be given by the petitioner to those
5 persons who would be entitled to notice of the petition if the proceeding were brought in such
6 other state, if any. The notice must be given in the same manner as notice is given in this state.

7 **33-15.2-209. Proceedings in more than one state.** -- Except for a petition for the
8 appointment of a guardian in an emergency or a protective order limited to property located in
9 this state as provided in § 33-15.2-204, if a petition for the appointment of a guardian or
10 protective order is filed in this and another state and neither petition has been dismissed or
11 withdrawn, the following rules apply:

12 (1) If the court in this state has jurisdiction under § 33-15.2-203, it may proceed with the
13 case unless a court in another state acquires jurisdiction under § 33-15.2-203 before the
14 appointment or issuance of the order.

15 (2) If the court in this state does not have jurisdiction under § 33-15.2-203, whether at the
16 time the petition is filed or at any time before the appointment or issuance of the order, the court
17 shall stay the proceeding and communicate with the court in the other state. If the court in the
18 other state does not determine that the court in this state is a more appropriate forum, the court in
19 this state shall dismiss the petition.

20 ARTICLE 3 – TRANSFER OF JURISDICTION:

21 **33-15.2-301. Petition to transfer jurisdiction to another state.** -- (a) Following the
22 appointment of a guardian or conservator, the guardian or conservator may petition the court to
23 transfer the guardianship or conservatorship to another state.

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

27 (c) On the court's own motion or on request of the incapacitated or protected person, or
28 another interested person, the court shall hold a hearing on a petition filed pursuant to subsection
29 (a) of this section.

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

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

34 (2) An objection to the transfer has not been made or, if an objection has been made, the

1 objector has not established that the transfer would be contrary to the interests of the
2 incapacitated person;

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

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

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

9 (1) The protected person is physically located in or is reasonably expected to move
10 permanently to the other state, or the protected person has a significant connection to the other
11 state considering the factors set forth in § 33-15.2-102(15);

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

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

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

19 **33-15.2-302. Petition to accept proceeding transferred from another state. -- (a)**
20 Upon issuance of a provisional order in another state to transfer a guardianship or conservatorship
21 to this state under procedures similar to those in § 33-15.2-301, the guardian or conservator shall
22 petition the court in this state to accept the guardianship or conservatorship. The petition must
23 include a certified copy of the other state's provisional order.

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

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

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

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

5 (f) The denial of a petition filed under subsection (a) of this section to accept a
6 guardianship or conservatorship from another state does not affect the ability of a guardian or
7 conservator appointed by a court in another state to seek appointment as guardian of the
8 incapacitated person or conservator of the protected person under chapter 33-15.

9 **33-15.2-303. Final order in transferring state.** -- Upon receipt from the court of the
10 other state of a provisional order issued under § 33-15.2-302 to accept a guardianship or
11 conservatorship transferred under § 33-15.2-301 and the filing of the documents required in this
12 state to terminate a guardianship or conservatorship, the court shall issue an order confirming the
13 transfer of the proceeding to the other state and terminating the guardianship or conservatorship
14 in this state.

15 **33-15.2-304. Final order in accepting state judicial review.** -- (a) Upon receipt of an
16 order issued under § 33-15.2-303 confirming the transfer of a guardianship or conservatorship
17 proceeding to this state and terminating the guardianship or conservatorship in the transferring
18 state, the court shall issue a final order appointing the guardian or conservator as guardian or
19 conservator in this state.

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

23 ARTICLE 4 – REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER
24 STATES:

25 **33-15.2-401. Registration of guardianship orders.** -- If a guardian has not been
26 appointed in this state and a petition for the appointment of a guardian is not pending in this state,
27 a guardian appointed in another state, after giving notice to the appointing court of an intent to
28 register, may register the guardianship order in this state by filing as a foreign judgment in a court
29 in any appropriate county, city or town of this state certified copies of the order and letters of
30 office.

31 **33-15.2-402. Registration of protective orders.** -- If a conservator has not been
32 appointed in this state and a petition for a protective order is not pending in this state, a
33 conservator appointed in another state, after giving notice to the appointing court of an intent to
34 register, may register the protective order in this state by filing as a foreign judgment in a court of

1 this state, in any county, city or town in which property belonging to the protected person is
2 located, certified copies of the order and letters of office and of any bond.

3 **33-15.2-403. Effect of registration.** -- (a) Upon registration of a guardianship or
4 protective order from another state, the guardian or conservator may exercise in this state all
5 powers authorized in the order of appointment except as prohibited under the laws of this state,
6 including maintaining actions and proceedings in this state and, if the guardian or conservator is
7 not a resident of this state, subject to any conditions imposed upon nonresident parties.

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

10 ARTICLE 5 – MISCELLANEOUS PROVISIONS:

11 **33-15.2-501. Uniformity of application and construction.** – In applying and construing
12 this uniform act, consideration must be given to the need to promote uniformity of the law with
13 respect to its subject matter among states that enact it.

14 **33-15.2-502. Relation to electronic signatures in global and national commerce act.** -
15 This chapter modifies, limits, and supersedes the Federal Electronic Signatures in Global and
16 National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede 101(c)
17 of that act, 15 U.S.C. 700(c), or authorize electronic delivery of any of the notices described in
18 Section 103(b) of that act, 15 U.S.C. 7003(b).

19 **33-15.2-503. Repeals.** -- The following acts and parts of acts are hereby repealed:
20 (1).....
21 (2).....
22 (3).....

23 **33-15.2-504. Transitional provision.** -- (a) This chapter applies to guardianship and
24 protective proceedings begun on or after January 1, 2015.

25 (b) For proceedings begun before January 1, 2015, whether or not a guardianship or
26 protective order has been issued, Articles 1, 3, 4 and §§ 33-15.2-501 and 33-15.2-502 of this
27 chapter apply.

28 SECTION 2. This act shall take effect on January 1, 2015.

=====
LC004890
=====

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

1 This act would address the issue of jurisdiction over adult guardianships,
2 conservatorships and other protective proceedings, providing a mechanism for resolving multi-
3 state jurisdictional disputes with the goal that only one state will have jurisdiction at any one
4 time. This act has already been adopted by thirty-nine (39) states, and/or territories including
5 Connecticut, Maine and Vermont.

6 This act would take effect on January 1, 2015.

=====
LC004890
=====