

2015 -- S 0525 SUBSTITUTE A AS AMENDED

=====
LC001116/SUB A
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

—————
A N A C T

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

Introduced By: Senators Lombardi, Jabour, Conley, McCaffrey, and Lynch

Date Introduced: February 26, 2015

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

8 **33-15.2-102. Definitions.** – As used 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 chapter 15 of 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 has authority to and is willing to act on the respondent's 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 chapter 15 of 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,
3 including any period of temporary absence, for at least six (6) consecutive months immediately
4 before the filing of a petition for the appointment of a guardian or issuance of a protective order;
5 or if none, the state in which the respondent was physically present, including any period of
6 temporary absence, for at least six (6) consecutive months ending within the six (6) months prior
7 to the filing of the petition.

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

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

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

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

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

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

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

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

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

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

29 **33-15.2-103. International application of chapter.** – A court of this state may treat a
30 foreign country as if it were a state for the purposes of applying: §§ 33-15.2-101 through 302; and
31 33-15.2-501 through 504.

32 **33-15.2-104. Communication between courts.** – (a) A court of this state may
33 communicate with a court in another state concerning a proceeding arising under this chapter.
34 The court may allow all the parties to participate in the communication. Except as otherwise

1 provided in subsection (b) of this section, the court shall make a record of the communication.
2 The record may be limited to the fact that the communication occurred and the names of the
3 participants.

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

6 **33-15.2-105. Cooperation between courts.** – (a) In a guardianship or protective
7 proceeding in this state, a court of this state may request the appropriate court of another state to:

8 (1) Hold an evidentiary hearing;

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

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

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

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

19 (6) Issue an order after a hearing if requested, authorizing the release of medical,
20 financial, criminal, or other relevant information in that state, including protected health
21 information as defined in 45 C.F.R. 160.103, as amended, to the extent permitted by law other
22 than this chapter.

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

27 **33-15.2-106. Taking testimony in another state.** – (a) In a guardianship or protective
28 proceeding, in addition to other procedures that may be available, testimony of witnesses who are
29 located in another state may be offered by deposition or other means allowable in this state for
30 testimony taken in another state. The court on its own motion may order that the testimony of a
31 witness be taken in another state and may prescribe the manner in which and the terms upon
32 which the testimony is to be taken.

33 (b) In a guardianship or protective proceeding, a court in this state may permit a witness
34 located in another state to be deposed or to testify by telephone or audiovisual or other electronic

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

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

6 **33-15.2-201. Significant connection factors.** – Determination of whether a respondent
7 has a significant connection with a particular state shall include consideration of the following
8 factors:

9 (1) The location of the respondent's family and others required to be notified of the
10 guardianship or protective proceeding;

11 (2) The length of time the respondent at any time was physically present in the state and
12 the duration of any absences;

13 (3) The location of the respondent's property; and

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

17 **33-15.2-202. Exclusive basis.** – Section 8-9-9 entitled "general probate jurisdiction",
18 Chapter 15 of title 33 entitled "limited guardianship and guardianship of adults", and this chapter
19 provide the jurisdictional basis for a court of this state to appoint a guardian or issue a protective
20 order for an adult.

21 **33-15.2-203. Initial jurisdiction.** – In addition to the limited or special jurisdiction under
22 § 33-15.2-204, a court of this state has jurisdiction to appoint a guardian or issue a protective
23 order for a respondent if:

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

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

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

28 (ii) The respondent has a home state, a petition for the appointment of a guardian or
29 protective order has not been filed in a court of that state or in another significant-connection
30 state, and, before the court makes the appointment or issues the order:

31 (A) A petition for appointment or order is not filed in the respondent's home state;

32 (B) An objection to the jurisdiction of the court in this state has not been filed; and

33 (C) The court in this state concludes that it is an appropriate forum under the factors set
34 forth in § 33-15.2-206; or

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

5 **33-15.2-204. Special cases.** – (a) A court of this state lacking jurisdiction under §§ 33-
6 15.2-203 has special jurisdiction to do any of the following:

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

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

11 (3) Appoint a guardian or conservator for an incapacitated or protected person for whom
12 a provisional or temporary order to transfer the proceeding from another state has been issued as
13 provided under procedures similar to § 33-15.2-301.

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

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

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

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

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

33 (1) Any expressed preference of the respondent;

34 (2) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to

1 occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

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

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

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

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

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

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

10 and

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

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

16 (1) Decline to exercise jurisdiction;

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

22 (3) Continue to exercise jurisdiction after considering:

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

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

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

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

1 other than this chapter.

2 **33-15.2-208. Notice of proceeding.** – If a petition for the appointment of a guardian or
3 issuance of a protective order is brought in this state and this state was not the respondent's home
4 state on the date the petition was filed, in addition to complying with the notice requirements of
5 this state, notice of the proceeding must be given by the petitioner to those persons who would be
6 entitled to notice of the petition if the proceeding were brought in such other state, if any. The
7 notice must be given in the manner as required by chapters 15 of title 33 and 22 of title 33.

8 **33-15.2-209. Proceedings in more than one state.** – Except for a petition for the
9 appointment of a guardian in an emergency or a protective order limited to property located in
10 this state as provided in §§ 33-1 5.2-204(a)(1) or (a)(2), if a petition for the appointment of a
11 guardian or protective order is filed in this and another state and neither petition has been
12 dismissed or withdrawn, the following rules apply:

13 (1) If the court in this state has jurisdiction under § 33-15.2-203, it may proceed with the
14 case unless a court in another state acquires jurisdiction under provisions similar to § 33-15.2-
15 203 before the appointment or issuance of the order.

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

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) The court shall hold a hearing on a petition filed pursuant to subsection (a) of this
28 section.

29 (d) The court shall issue a temporary order granting a petition to transfer a guardianship
30 and shall direct the guardian to petition for guardianship in the other state if the court finds that:

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

33 (2) An objection to the transfer has not been made or, if an objection has been made, the
34 objector has not established that the transfer would be contrary to the interests of the

1 incapacitated person:

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

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

6 (e) The court shall issue a temporary order granting a petition to transfer a
7 conservatorship and shall direct the conservator to file a petition for conservatorship in the other
8 state if the court finds that:

9 (1) The protected person is physically present 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 § 33-15.2-201;

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

21 (1) A provisional or temporary order accepting the proceeding from the court to which
22 the proceeding is to be transferred which is issued under provisions similar to § 33-15.2-302; and

23 (2) The documents required to terminate a guardianship or conservatorship in this state.

24 **33-15.2-302. Petition to accept proceeding transferred from another state. – (a) Upon**
25 issuance of a provisional or temporary order in another state to transfer a guardianship or
26 conservatorship to this state under provisions similar to those in § 33-15.2-301, the guardian or
27 conservator shall petition the court in this state to accept the guardianship or conservatorship. The
28 petition must include a certified copy of the other state's provisional or temporary order and
29 relevant file documents.

30 (b) Notice of a petition under subsection (a) of this section to accept a guardianship or
31 conservatorship from another state must be given by the petitioner to those persons that would be
32 entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a
33 protective order in both the transferring state and this state. The notice must be given in the
34 manner required by chapters 15 of title 33 and 22 of title 33.

1 (c) The court shall hold a hearing on a petition filed pursuant to subsection (a) of this
2 section to accept a guardianship or conservatorship from another state.

3 (d) If the court is satisfied with the documentation and evidence presented, the petition
4 filed under subsection (a) of this section shall be granted, unless an objection is made and the
5 objector establishes that transfer of the proceeding would be contrary to the interests of the
6 incapacitated or protected person.

7 (e) No later than ninety (90) days after issuance of a permanent order accepting transfer
8 of a guardianship or conservatorship, the court shall determine whether the guardianship or
9 conservatorship needs to be modified to conform to the law of this state.

10 (f) In approving a petition under this section, the court shall recognize a guardianship or
11 conservatorship order from the other state, including the determination of the incapacitated or
12 protected person's incapacity and the appointment of the guardian or conservator, if the guardian
13 or conservator is eligible to act in this state, and the determination of the need for a guardian or
14 conservator conforms to the law of this state.

15 (g) The denial of a petition filed under subsection (a) of this section to accept a
16 guardianship or conservatorship from another state does not affect the ability of a guardian or
17 conservator appointed by a court in another state to seek appointment as guardian of the
18 incapacitated person or conservator of the protected person under chapter 15 of title 33.

19 **33-15.2-401. Registration of guardianship orders.** – If a guardian has been appointed
20 in another state and a petition for the appointment of a guardian is not pending in this state, a
21 guardian appointed in another state, after giving notice to the appointing court of an intent to
22 register, may register the guardianship order in this state by filing as a foreign judgment in a court
23 of this state in any appropriate city or town of this state certified copies of the order and letters of
24 office.

25 **33-15.2-402. Registration of protective orders.** – If a conservator has been appointed in
26 another state and a petition for a protective order is not pending in this state, the conservator
27 appointed in another state, after giving notice to the appointing court of an intent to register, may
28 register the protective order in this state by filing as a foreign judgment in a court of this state, in
29 any city or town in which property belonging to the protected person is located, certified copies
30 of the order and letters of office and of any bond.

31 **33-15.2-403. Effect of registration.** – (a) Upon registration of a guardianship or
32 protective order from another state, the guardian or conservator may exercise in this state all
33 powers authorized in the order of appointment except as prohibited under the laws of this state,
34 including maintaining actions and proceedings in this state and, if the guardian or conservator is

1 not a resident of this state, subject to any conditions imposed upon nonresident parties.

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

4 **33-15.2-501. Uniformity of application and construction.** – In applying and construing
5 this uniform act, consideration must be given to the need to promote uniformity of the law with
6 respect to its subject matter among states that enact it.

7 **33-15.2-502. Relation to electronic signatures in global and national commerce act.** –
8 This chapter modifies, limits, and supersedes the Federal Electronic Signatures in Global and
9 National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede
10 section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the
11 notices described in section 103(b) of that act, 15 U.S.C. § 7003(b).

12 **33-15.2-503. Reserved.** –

13 **33-15.2-504. Transitional provision.** – (a) This chapter applies to guardianship and
14 protective proceedings begun on or after January 1, 2016.

15 (b) For proceedings begun before January 1, 2016, whether or not a guardianship or
16 protective order has been issued, §§ 33-15.2-101 through 106 and 33-15.2-301 through 502
17 apply.

18 SECTION 2. This act shall take effect on January 1, 2016, except insofar as § 33-15.2-
19 504(b) may apply.

=====
LC001116/SUB A
=====

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 adopt the "Uniform Adult Guardianship and Protective Proceedings
2 Jurisdiction Act" in Rhode Island.

3 This act would take effect on January 1, 2016, except insofar as § 33-15.2-504(b) may
4 apply.

=====
LC001116/SUB A
=====