

1 **UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE**
2 **PROCEEDINGS JURISDICTION ACT**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lyle W. Hillyard**

6 House Sponsor: Kay L. McIff

8 **LONG TITLE**

9 **General Description:**

10 This bill provides for the determination of jurisdiction in proceedings for guardianship
11 and conservatorships for incapacitated adults.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ sets out procedures for determining where jurisdiction lies in guardianship and
15 conservatorship proceedings when the parties are not all in the same state;
- 16 ▶ provides for jurisdiction in states with a significant connection to the incapacitated
17 person;
- 18 ▶ defines "significant connection";
- 19 ▶ provides for cooperation between courts of different states;
- 20 ▶ allows for special circumstances if an incapacitated person is in a state that does not
21 meet the "significant connection" standard;
- 22 ▶ provides procedures for the transfer of jurisdiction to another state; and
- 23 ▶ allows for registration of protective orders from other states.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 This act takes effect on January 1, 2009.

28 **Utah Code Sections Affected:**

29 ENACTS:

- 30 **75-5b-101**, Utah Code Annotated 1953
- 31 **75-5b-102**, Utah Code Annotated 1953
- 32 **75-5b-103**, Utah Code Annotated 1953
- 33 **75-5b-104**, Utah Code Annotated 1953
- 34 **75-5b-105**, Utah Code Annotated 1953
- 35 **75-5b-106**, Utah Code Annotated 1953
- 36 **75-5b-201**, Utah Code Annotated 1953
- 37 **75-5b-202**, Utah Code Annotated 1953
- 38 **75-5b-203**, Utah Code Annotated 1953
- 39 **75-5b-204**, Utah Code Annotated 1953
- 40 **75-5b-205**, Utah Code Annotated 1953
- 41 **75-5b-206**, Utah Code Annotated 1953
- 42 **75-5b-207**, Utah Code Annotated 1953
- 43 **75-5b-208**, Utah Code Annotated 1953
- 44 **75-5b-301**, Utah Code Annotated 1953
- 45 **75-5b-302**, Utah Code Annotated 1953
- 46 **75-5b-401**, Utah Code Annotated 1953
- 47 **75-5b-402**, Utah Code Annotated 1953
- 48 **75-5b-403**, Utah Code Annotated 1953
- 49 **75-5b-501**, Utah Code Annotated 1953
- 50 **75-5b-502**, Utah Code Annotated 1953
- 51 **75-5b-503**, Utah Code Annotated 1953

52

Be it enacted by the Legislature of the state of Utah:

54

Section 1. Section **75-5b-101** is enacted to read:

55

CHAPTER 5b. UNIFORM ADULT GUARDIANSHIP AND

56

PROTECTIVE PROCEEDINGS JURISDICTION ACT

57

Part 1. General Provisions

58 **75-5b-101. Title.**

59 This chapter is known as the "Uniform Adult Guardianship and Protective Proceedings
60 Jurisdiction Act."

61 Section 2. Section **75-5b-102** is enacted to read:

62 **75-5b-102. Definitions.**

63 In this chapter:

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

65 (2) "Conservator" means a person appointed by the court to administer the property of
66 an adult, including a person appointed under Title 75, Chapter 5, Part 4, Protection of Property
67 of Persons Under Disability and Minors.

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

71 (4) "Guardian" means a person appointed by the court to make decisions regarding the
72 person of an adult, including a person appointed under Title 75, Chapter 5, Part 3, Guardians of
73 Incapacitated Persons.

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

75 (6) "Guardianship proceeding" means a proceeding in which an order for the
76 appointment of a guardian is sought or has been issued.

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

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

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

84 (10) "Person," except in the terms "incapacitated person" or "protected person," means
85 an individual, corporation, business trust, estate, trust, partnership, limited liability company,

86 association, joint venture, government or governmental subdivision, agency or instrumentality,
87 public corporation, or any other legal or commercial entity.

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

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

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

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

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

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

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

103 Section 3. Section **75-5b-103** is enacted to read:

104 **75-5b-103. International application.**

105 A court of this state may treat a foreign country as if it were a state for the purpose of
106 applying Parts 1, 2, 3, and 5 of this chapter.

107 Section 4. Section **75-5b-104** is enacted to read:

108 **75-5b-104. Communication between courts.**

109 (1) A court of this state may communicate with a court in another state concerning a
110 proceeding arising under this chapter. The court may allow the parties to participate in the
111 communication. Except as otherwise provided in Subsection (2), the court shall make a record
112 of the communication. The record may be limited to the fact that the communication occurred.

113 (2) Courts may communicate concerning schedules, calendars, court records, and other

114 administrative matters without making a record.

115 Section 5. Section **75-5b-105** is enacted to read:

116 **75-5b-105. Cooperation between courts.**

117 (1) In a guardianship or protective proceeding in this state, a court of this state may
118 request the appropriate court of another state to do any of the following:

119 (a) hold an evidentiary hearing;

120 (b) order a person in that state to produce evidence or give testimony pursuant to
121 procedures of that state;

122 (c) order that an evaluation or assessment be made of the respondent;

123 (d) order any appropriate investigation of a person involved in a proceeding;

124 (e) forward to the court of this state a certified copy of the transcript or other record of
125 a hearing under Subsection (1)(a) or any other proceeding, any evidence otherwise produced
126 under Subsection (1)(b), and any evaluation or assessment prepared in compliance with an order
127 under Subsection (1)(c) or (d);

128 (f) issue any order necessary to assure the appearance in the proceeding of a person
129 whose presence is necessary for the court to make a determination, including the respondent or
130 the incapacitated or protected person; and

131 (g) issue an order authorizing the release of medical, financial, criminal, or other
132 relevant information in that state, including protected health information as defined in 45 Code
133 of Federal Regulations Section 164.504.

134 (2) If a court of another state in which a guardianship or protective proceeding is
135 pending requests assistance of the kind provided in Subsection (1), a court of this state has
136 jurisdiction for the limited purpose of granting the request or making reasonable efforts to
137 comply with the request.

138 Section 6. Section **75-5b-106** is enacted to read:

139 **75-5b-106. Taking testimony in another state.**

140 (1) In a guardianship or protective proceeding, in addition to other procedures that may
141 be available, testimony of a witness who is located in another state may be offered by deposition

142 or other means allowable in this state for testimony taken in another state. The court on its own
143 motion may order that the testimony of a witness be taken in another state and may prescribe
144 the manner in which and the terms upon which the testimony is to be taken.

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

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

152 Section 7. Section **75-5b-201** is enacted to read:

153 **Part 2. Jurisdiction**

154 **75-5b-201. Exclusive basis -- Significant connection.**

155 (1) This part provides the exclusive jurisdictional basis for a court of this state to
156 appoint a guardian or issue a protective order for an adult.

157 (2) In determining under Section 75-5b-203 and Subsection 75-5b-301(5) whether a
158 respondent has a significant connection with a particular state, the court shall consider:

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

161 (b) the length of time the respondent at any time was physically present in the state and
162 the duration of any absence;

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

164 (d) the extent to which the respondent has ties to the state such as voting registration,
165 state or local tax return filing, vehicle registration, driver license, social relationship, and receipt
166 of services.

167 Section 8. Section **75-5b-202** is enacted to read:

168 **75-5b-202. Jurisdiction.**

169 A court of this state has jurisdiction to appoint a guardian or issue a protective order for

170 a respondent if:

171 (1) this state is the respondent's home state;

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

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

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

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

179 (ii) an objection to the court's jurisdiction is not filed by a person required to be notified
180 of the proceeding; and

181 (iii) the court in this state concludes that it is an appropriate forum under the factors set
182 forth in Section 75-5b-205;

183 (3) this state does not have jurisdiction under either Subsection (1) or (2), the
184 respondent's home state and all significant-connection states have declined to exercise
185 jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is
186 consistent with the constitutions of this state and the United States; or

187 (4) the requirements for special jurisdiction under Section 75-5b-204 are met.

188 Section 9. Section **75-5b-203** is enacted to read:

189 **75-5b-203. Special jurisdiction.**

190 (1) A court of this state lacking jurisdiction under Section 75-5b-202 has jurisdiction to
191 do any of the following:

192 (a) appoint a guardian in an emergency for a term not exceeding 90 days for a
193 respondent who is physically present in this state;

194 (b) issue a protective order with respect to real or tangible personal property located in
195 this state; and

196 (c) appoint a guardian or conservator for an incapacitated or protected person for
197 whom a provisional order to transfer the proceeding from another state has been issued under

198 procedures similar to Section 75-5b-301.

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

203 Section 10. Section **75-5b-204** is enacted to read:

204 **75-5b-204. Exclusive and continuing jurisdiction.**

205 Except as otherwise provided in Section 75-5b-203, a court that has appointed a
206 guardian or issued a protective order consistent with this chapter has exclusive and continuing
207 jurisdiction over the proceeding until it is terminated by the court or the appointment or order
208 expires by its own terms.

209 Section 11. Section **75-5b-205** is enacted to read:

210 **75-5b-205. Declining jurisdiction if another court is a more appropriate forum.**

211 (1) A court of this state having jurisdiction under Section 75-5b-202 to appoint a
212 guardian or issue a protective order may decline to exercise its jurisdiction if it determines at
213 any time that a court of another state is a more appropriate forum.

214 (2) If a court of this state declines to exercise its jurisdiction under Subsection (1), it
215 shall either dismiss or stay the proceeding. The court may impose any other condition the court
216 considers just and proper, including the condition that a petition for the appointment of a
217 guardian or issuance of a protective order be promptly filed in another state.

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

220 (a) any expressed preference of the respondent;

221 (b) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to
222 occur and which state could best protect the respondent from the abuse, neglect, or
223 exploitation;

224 (c) the length of time the respondent was physically located in or was a legal resident of
225 this or another state;

- 226 (d) the distance of the respondent from the court in each state;
- 227 (e) the financial circumstances of the respondent's estate;
- 228 (f) the nature and location of the evidence;
- 229 (g) the ability of the court in each state to decide the issue expeditiously and the
- 230 procedures necessary to present evidence;
- 231 (h) the familiarity of the court of each state with the facts and issues in the proceeding;
- 232 and
- 233 (i) if an appointment were made, the court's ability to monitor the conduct of the
- 234 guardian or conservator.

235 Section 12. Section **75-5b-206** is enacted to read:

236 **75-5b-206. Jurisdiction declined by reason of conduct.**

237 (1) If at any time a court of this state determines that it acquired jurisdiction to appoint

238 a guardian or issue a protective order because of unjustifiable conduct, the court may:

- 239 (a) decline to exercise jurisdiction;
- 240 (b) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to
- 241 ensure the health, safety, and welfare of the respondent or the protection of the respondent's
- 242 property or prevent a repetition of the unjustifiable conduct, including staying the proceeding
- 243 until a petition for the appointment of a guardian or issuance of a protective order is filed in a
- 244 court of another state having jurisdiction; or
- 245 (c) continue to exercise jurisdiction after considering:
- 246 (i) the extent to which the respondent and all persons required to be notified of the
- 247 proceedings have acquiesced in the exercise of the court's jurisdiction;
- 248 (ii) whether it is a more appropriate forum than the court of any other state under the
- 249 factors set forth in Subsection 75-5b-205(3); and
- 250 (iii) whether the court of any other state would have jurisdiction under factual
- 251 circumstances in substantial conformity with the jurisdictional standards of Section 75-5b-202.

252 (2) If a court of this state determines that it acquired jurisdiction to appoint a guardian

253 or issue a protective order because a party seeking to invoke its jurisdiction engaged in

254 unjustifiable conduct, it may assess against that party necessary and reasonable expenses,
255 including attorney fees, investigative fees, court costs, communication expenses, witness fees
256 and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any
257 kind against the state or a governmental subdivision, agency, or instrumentality of the state
258 unless authorized by law other than this chapter.

259 Section 13. Section **75-5b-207** is enacted to read:

260 **75-5b-207. Notice of proceeding.**

261 If a petition for the appointment of a guardian or issuance of a protective order is
262 brought in this state and this state was not the respondent's home state on the date the petition
263 was filed, in addition to complying with the notice requirements of this state, notice of the
264 petition shall be given to those persons who would be entitled to notice of the petition if the
265 proceeding were brought in the respondent's home state. The notice shall be given in the same
266 manner as notice is given in this state.

267 Section 14. Section **75-5b-208** is enacted to read:

268 **75-5b-208. Proceedings in more than one state.**

269 Except for a petition for the appointment of a guardian in an emergency or issuance of a
270 protective order limited to property located in this state as provided in Subsection
271 75-5b-203(1)(a) or (b), if a petition for the appointment of a guardian or issuance of a
272 protective order is filed in this state and in another state and neither petition has been dismissed
273 or withdrawn, the following rules apply:

274 (1) If the court in this state has jurisdiction under Section 75-5b-202, it may proceed
275 with the case unless a court in another state acquires jurisdiction under Section 75-5b-202
276 before the appointment or issuance of the order.

277 (2) If the court in this state does not have jurisdiction under Section 75-5b-202,
278 whether at the time the petition is filed or at any time before the appointment or issuance of the
279 order, the court shall stay the proceeding and communicate with the court in the other state. If
280 the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless
281 the court in the other state determines that the court in this state is a more appropriate forum.

282 Section 15. Section **75-5b-301** is enacted to read:

283 **Part 3. Transfer of Jurisdiction**

284 **75-5b-301. Transfer of guardianship or conservatorship to another state.**

285 (1) A guardian or conservator appointed in this state may petition the court to transfer
286 the guardianship or conservatorship to another state.

287 (2) Notice of a petition under Subsection (1) must be given to the persons that would
288 be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

289 (3) On the court's own motion or on request of the guardian or conservator, the
290 incapacitated or protected person, or other person required to be notified of the petition, the
291 court shall hold a hearing on a petition filed pursuant to Subsection (1).

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

296 (a) the incapacitated person is physically present in or is reasonably expected to move
297 permanently to the other state;

298 (b) an objection to the transfer has not been made or, if an objection has been made, the
299 objector has not established that the transfer would be contrary to the interests of the
300 incapacitated person; and

301 (c) plans for care and services for the incapacitated person in the other state are
302 reasonable and sufficient.

303 (5) The court shall issue a provisional order granting a petition to transfer a
304 conservatorship and shall direct the conservator to petition for conservatorship in the other state
305 if the court is satisfied that the conservatorship will be accepted by the court of the other state
306 and the court finds that:

307 (a) the protected person is physically present in or is reasonably expected to move
308 permanently to the other state, or the protected person has a significant connection to the other
309 state considering the factors in Subsection 75-5b-201(2);

310 (b) an objection to the transfer has not been made or, if an objection has been made, the
311 objector has not established that the transfer would be contrary to the interests of the protected
312 person; and

313 (c) adequate arrangements will be made for management of the protected person's
314 property.

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

317 (a) a provisional order accepting the proceeding from the court to which the proceeding
318 is to be transferred which is issued under provisions similar to Section 75-5b-302; and

319 (b) the documents required to terminate a guardianship or conservatorship in this state.
320 Section 16. Section **75-5b-302** is enacted to read:

321 **75-5b-302. Accepting guardianship or conservatorship transferred from another**
322 **state.**

323 (1) To confirm transfer of a guardianship or conservatorship transferred to this state
324 under provisions similar to Section 75-5b-301, the guardian or conservator shall petition the
325 court in this state to accept the guardianship or conservatorship. The petition shall include a
326 certified copy of the other state's provisional order of transfer.

327 (2) Notice of a petition under Subsection (1) shall be given by the petitioner to those
328 persons who would be entitled to notice if the petition were a petition for the appointment of a
329 guardian or issuance of a protective order in both the transferring state and this state. The
330 notice shall be given in the same manner as notice is given in this state.

331 (3) On the court's own motion or on request of the incapacitated or protected person,
332 or other person required to be notified of the proceeding, the court shall hold a hearing on a
333 petition filed pursuant to Subsection (1).

334 (4) The court shall issue an order provisionally granting a petition filed under
335 Subsection (1) unless:

336 (a) an objection is made and the objector establishes that transfer of the proceeding
337 would be contrary to the interests of the incapacitated or protected person; or

338 (b) the guardian or conservator is ineligible for appointment in this state.

339 (5) The court shall issue a final order accepting the proceeding and appointing the
340 guardian or conservator as guardian or conservator in this state upon its receipt from the court
341 from which the proceeding is being transferred of a final order issued under provisions similar to
342 Section 75-5b-301 transferring the proceeding to this state.

343 (6) Not later than 90 days after issuance of a final order accepting transfer of a
344 guardianship or conservatorship, the court shall determine whether the guardianship or
345 conservatorship needs to be modified to conform to the law of this state.

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

349 (8) The denial by a court of this state of a petition to accept a guardianship or
350 conservatorship transferred from another state does not affect the ability of the guardian or
351 conservator to seek appointment as guardian or conservator in this state under Title 75, Chapter
352 5, Part 3, Guardians of Incapacitated Persons, if the court has jurisdiction to make an
353 appointment other than by reason of the provisional order of transfer.

354 Section 17. Section **75-5b-401** is enacted to read:

355 **Part 4. Registration and Recognition of Orders from Other States**

356 **75-5b-401. Registration of guardianship orders.**

357 If a guardian has been appointed in another state and a petition for the appointment of a
358 guardian is not pending in this state, the guardian appointed in the other state, after giving
359 notice to the appointing court of an intent to register, may register the guardianship order in this
360 state by filing certified copies of the order and letters of office as a foreign judgment in a court
361 in any appropriate county of this state.

362 Section 18. Section **75-5b-402** is enacted to read:

363 **75-5b-402. Registration of protective orders.**

364 If a conservator has been appointed in another state and a petition for a protective order
365 is not pending in this state, the conservator appointed in the other state, after giving notice to

366 the appointing court of an intent to register, may register the protective order in this state by
367 filing as a foreign judgment in a court of this state, in any county in which property belonging to
368 the protected person is located, certified copies of the order, letters of office, and any bond.

369 Section 19. Section **75-5b-403** is enacted to read:

370 **75-5b-403. Effect of registration.**

371 (1) Upon registration of a guardianship or protective order from another state, the
372 guardian or conservator may exercise in this state all powers authorized in the order of
373 appointment except as prohibited under the laws of this state, including maintaining actions and
374 proceedings in this state and, if the guardian or conservator is not a resident of this state, subject
375 to any conditions imposed upon nonresident parties.

376 (2) A court of this state may grant any relief available under this chapter and other law
377 of this state to enforce a registered order.

378 Section 20. Section **75-5b-501** is enacted to read:

379 **Part 5. Miscellaneous Provisions**

380 **75-5b-501. Uniformity of application and construction.**

381 In applying and construing this uniform act, consideration shall be given to the need to
382 promote uniformity of the law with respect to its subject matter among states that enact it.

383 Section 21. Section **75-5b-502** is enacted to read:

384 **75-5b-502. Relation to electronic signatures in global and national commerce act.**

385 This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global
386 and National Commerce Act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or
387 supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of
388 any of the notices described in Section 103(b), 15 U.S.C. Sec. 7003(b).

389 Section 22. Section **75-5b-503** is enacted to read:

390 **75-5b-503. Transitional provision.**

391 (1) This chapter applies to guardianship and protective proceedings begun on or after
392 January 1, 2009.

393 (2) Parts 1, 3, and 4 and Sections 75-5b-501 and 75-5b-502 apply to proceedings begun

394 before January 1, 2009, regardless of whether a guardianship or protective order has been
395 issued.

396 Section 23. **Effective date.**

397 This act takes effect on January 1, 2009.