

SENATE BILL REPORT

SHB 1261

As Reported by Senate Committee On:
Judiciary, March 18, 2009

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

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

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Goodman, Moeller, Green, Williams, Pedersen, Appleton, Morrell and Ormsby; by request of Uniform Legislation Commission).

Brief History: Passed House: 2/27/09, 94-0.

Committee Activity: Judiciary: 3/18/09 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Kohl-Welles and Roach.

Staff: Lidia Mori (786-7755)

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

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

The National Conference of Commissioners on Uniform State Laws (NCCUSL) is an organization that authors and promotes enactment of uniform state laws in areas of law where

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national uniformity is desirable and practical. In 2006 the NCCUSL adopted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (Act) to establish procedures for addressing interstate jurisdictional, transfer, and enforcement issues relating to adult guardianship and protective proceedings.

Summary of Bill: The Act is adopted. The Act establishes standards for determining the state court with primary jurisdiction over guardianship and protective proceedings, procedures for communication and cooperation between state courts, methods for transferring jurisdiction to another state, and recognition and enforcement of out-of-state orders.

A "guardianship proceeding" is a proceeding for the appointment of a guardian to make decisions regarding the person of an adult (respondent). A "protective proceeding" is a proceeding to appoint a guardian of the estate, or a conservator, to administer the property of a person.

Primary jurisdiction over these proceedings rests in the "home state," followed by a state in which the respondent has a "significant connection." A "home state" means the state in which the respondent is physically present for at least six consecutive months immediately before the filing of the petition. A "significant-connection state" is a state with which the respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available. Factors for determining a significant connection include the length of time the respondent has been present in the state; the location of family and property; and other ties to the state, such as voting registration or vehicle registration. A significant-connection state may exercise jurisdiction if (1) there is no home state; (2) the home state has declined to exercise jurisdiction; or (3) no action has been filed in the home state or another significant-connection state, no objection to the court's jurisdiction has been filed, and the court is a more appropriate forum than a court in another state. A state that is not a home state or a significant-connection state may exercise jurisdiction if the home state and significant-connection states have declined to exercise jurisdiction.

A court may have special jurisdiction to (1) process, in an emergency, a petition for the appointment of a guardian for a person who is physically present in the state for a term of up to 90 days; and (2) issue a protective order with respect to property that is located in the state if a petition for appointment of a guardian or conservator is pending or has been approved in another state.

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

A guardian or conservator appointed in another state may register the guardianship or protective order in an appropriate Washington court by filing the order as a foreign judgment. Once registered, the guardian or conservator may exercise in Washington all powers authorized in the order of appointment, unless prohibited by Washington law. A Washington court may grant any relief available under Washington law to enforce a registered order.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on January 1, 2010.

Staff Summary of Public Testimony: In guardianship situations, very often the incapacitated person is in one state, the person seeking to be the guardian is in another state, and the property is in a third state, so states need to be able to cooperate with each other. Washington would be a participating state with other states that have already adopted this uniform act. For this bill, the NCCUSL has taken elements of the Uniform Child Custody Jurisdiction Act, which all the states have adopted. Also the need for temporary or emergency orders is addressed so the status quo can be preserved and people can get immediate help. The bill makes provisions for this by creating a 90-day window to get things sorted out and resolve the jurisdiction issue. An existing order can be transferred to another state, and it can be registered there. Evidentiary standards are established. The whole thrust is to simplify these procedures, reduce the litigation and save money, and let people deal effectively with their problems. This bill deals with the procedural aspects of guardianship between states. One thing that is troubling is that sometimes grandparents are kidnapped and it's difficult to sort out which state should have jurisdiction. At least seven states have enacted this uniform law and it is proposed in about 22 other states during this legislative year, including Oregon. Full faith and credit avoids relitigation of issues.

Persons Testifying: PRO: Representative Roger Goodman, prime sponsor; Marlin Appelwick, Washington Uniform Law Commission; Robert Nettleton, Washington State Bar Association, Elder Law Section.