

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1261**

61st Legislature  
2009 Regular Session

Passed by the House February 27, 2009  
Yeas 94 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate April 3, 2009  
Yeas 46 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1261** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1261**

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Passed Legislature - 2009 Regular Session

**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Goodman, Moeller, Green, Williams, Pedersen, Appleton, Morrell, and Ormsby; by request of Uniform Legislation Commission)

READ FIRST TIME 02/11/09.

1       AN ACT Relating to adult guardianship and protective proceedings  
2 jurisdiction; adding a new chapter to Title 11 RCW; and providing an  
3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5                                       **ARTICLE 1**

6                                       **GENERAL PROVISIONS**

7       NEW SECTION.   **Sec. 1.** This chapter may be cited as the uniform  
8 adult guardianship and protective proceedings jurisdiction act.

9       NEW SECTION.   **Sec. 2.** In this chapter:

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

12       (2) "Guardian of the estate" means a person appointed by the court  
13 to administer the property of an adult, and includes a conservator  
14 appointed by the court in another state.

15       (3) "Guardian of the person" or "guardian" means a person appointed  
16 by the court to make decisions regarding the person of an adult.

1 (4) "Guardianship order" means an order appointing a guardian of  
2 the person or guardian of the estate.

3 (5) "Guardianship proceeding" means a judicial proceeding in which  
4 an order for the appointment of a guardian of the person or guardian of  
5 the estate is sought or has been issued.

6 (6) "Incapacitated person" means an adult for whom a guardian of  
7 the person or guardian of the estate has been appointed.

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

11 (8) "Person," except in the term incapacitated person or protected  
12 person, means an individual, corporation, business trust, estate,  
13 trust, partnership, limited liability company, association, joint  
14 venture, public corporation, government or governmental subdivision,  
15 agency, or instrumentality, or any other legal or commercial entity.

16 (9) "Protected person" means an adult for whom a protective order  
17 has been issued.

18 (10) "Protective order" means an order appointing a guardian of the  
19 estate or other order related to management of an adult's property,  
20 including an order issued by a court in another state appointing a  
21 conservator.

22 (11) "Protective proceeding" means a judicial proceeding in which  
23 a protective order is sought or has been issued.

24 (12) "Record" means information that is inscribed on a tangible  
25 medium or that is stored in an electronic or other medium and is  
26 retrievable in perceivable form.

27 (13) "Respondent" means an adult for whom a protective order or the  
28 appointment of a guardian of the person is sought.

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

33 NEW SECTION. **Sec. 3.** A court of this state may treat a foreign  
34 country as if it were a state for the purpose of applying this chapter.

35 NEW SECTION. **Sec. 4.** (1) A court of this state may communicate  
36 with a court in another state concerning a proceeding arising under

1 this chapter. The court may allow the parties to participate in the  
2 communication. Except as otherwise provided in subsection (2) of this  
3 section, the court shall make a record of the communication. The  
4 record may be limited to the fact that the communication occurred.

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

7 NEW SECTION. **Sec. 5.** (1) In a guardianship or protective  
8 proceeding in this state, a court of this state may request the  
9 appropriate court of another state to do any of the following:

10 (a) Hold an evidentiary hearing;

11 (b) Order a person in that state to produce evidence or give  
12 testimony pursuant to procedures of that state;

13 (c) Order that an evaluation or assessment be made of the  
14 respondent;

15 (d) Order any appropriate investigation of a person involved in a  
16 proceeding;

17 (e) Forward to the court of this state a certified copy of the  
18 transcript or other record of a hearing under (a) of this subsection or  
19 any other proceeding, any evidence otherwise produced under (b) of this  
20 subsection, and any evaluation or assessment prepared in compliance  
21 with an order under (c) or (d) of this subsection;

22 (f) Issue any order necessary to assure the appearance in the  
23 proceeding of a person whose presence is necessary for the court to  
24 make a determination, including the respondent or the incapacitated or  
25 protected person;

26 (g) Issue an order authorizing the release of medical, financial,  
27 criminal, or other relevant information in that state, including  
28 protected health information as defined in 45 C.F.R. Sec. 164.504.

29 (2) If a court of another state in which a guardianship or  
30 protective proceeding is pending requests assistance of the kind  
31 provided in subsection (1) of this section, a court of this state has  
32 jurisdiction for the limited purpose of granting the request or making  
33 reasonable efforts to comply with the request.

34 NEW SECTION. **Sec. 6.** (1) In a guardianship or protective  
35 proceeding, in addition to other procedures that may be available,  
36 testimony of a witness who is located in another state may be offered

1 by deposition or other means allowable in this state for testimony  
2 taken in another state. The court on its own motion may order that the  
3 testimony of a witness be taken in another state and may prescribe the  
4 manner in which and the terms upon which the testimony is to be taken.

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

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

14 **ARTICLE 2**  
15 **JURISDICTION**

16 NEW SECTION. **Sec. 7.** (1) In this chapter:

17 (a) "Emergency" means a circumstance that likely will result in  
18 substantial harm to a respondent's health, safety, or welfare, and for  
19 which the appointment of a guardian is necessary because no other  
20 person has authority and is willing to act on the respondent's behalf.

21 (b) "Home state" means the state in which the respondent was  
22 physically present, including any period of temporary absence, for at  
23 least six consecutive months immediately before the filing of a  
24 petition for a protective order or the appointment of a guardian; or if  
25 none, the state in which the respondent was physically present,  
26 including any period of temporary absence, for at least six consecutive  
27 months ending within the six months prior to the filing of the  
28 petition.

29 (c) "Significant-connection state" means a state, other than the  
30 home state, with which a respondent has a significant connection other  
31 than mere physical presence and in which substantial evidence  
32 concerning the respondent is available.

33 (2) In determining under sections 9 and 16(5) of this act whether  
34 a respondent has a significant connection with a particular state, the  
35 court shall consider:

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

3 (b) The length of time the respondent at any time was physically  
4 present in the state and the duration of any absence;

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

6 (d) The extent to which the respondent has ties to the state such  
7 as voting registration, state or local tax return filing, vehicle  
8 registration, driver's license, social relationship, and receipt of  
9 services.

10 NEW SECTION. **Sec. 8.** This chapter provides the exclusive  
11 jurisdictional basis for a court of this state to appoint a guardian or  
12 issue a protective order for an adult under chapters 11.88 and 11.92  
13 RCW.

14 NEW SECTION. **Sec. 9.** A court of this state has jurisdiction to  
15 appoint a guardian or issue a protective order for a respondent if:

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

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

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

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

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

28 (ii) An objection to the court's jurisdiction is not filed by a  
29 person required to be notified of the proceeding; and

30 (iii) The court in this state concludes that it is an appropriate  
31 forum under the factors set forth in section 12 of this act;

32 (3) This state does not have jurisdiction under either subsection  
33 (1) or (2) of this section, the respondent's home state and all  
34 significant-connection states have declined to exercise jurisdiction  
35 because this state is the more appropriate forum, and jurisdiction in

1 this state is consistent with the constitutions of this state and the  
2 United States; or

3 (4) The requirements for special jurisdiction under section 10 of  
4 this act are met.

5 NEW SECTION. **Sec. 10.** (1) A court of this state lacking  
6 jurisdiction under section 9 of this act has special jurisdiction to do  
7 any of the following:

8 (a) In an emergency, process a petition under RCW 11.88.090 for  
9 appointment of a guardian for a respondent who is physically present in  
10 this state, for a term not exceeding ninety days;

11 (b) Issue a protective order with respect to a respondent's real or  
12 tangible personal property located in this state if a petition for  
13 appointment of a guardian or a conservator for the respondent is  
14 pending or has been approved in another state;

15 (c) Appoint a guardian of the person or guardian of the estate for  
16 an incapacitated or protected person for whom a provisional order to  
17 transfer the proceeding from another state has been issued under  
18 procedures similar to section 16 of this act.

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

25 NEW SECTION. **Sec. 11.** Except as otherwise provided in section 10  
26 of this act, a court that has appointed a guardian or issued a  
27 protective order consistent with this chapter has exclusive and  
28 continuing jurisdiction over the proceeding until it is terminated by  
29 the court or the appointment or order expires by its own terms.

30 NEW SECTION. **Sec. 12.** (1) A court of this state having  
31 jurisdiction under section 9 of this act to appoint a guardian or issue  
32 a protective order may decline to exercise its jurisdiction if it  
33 determines at any time that a court of another state is a more  
34 appropriate forum.

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

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

9 (a) Any expressed preference of the respondent;

10 (b) Whether abuse, neglect, or exploitation of the respondent has  
11 occurred or is likely to occur and which state could best protect the  
12 respondent from the abuse, neglect, or exploitation;

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

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

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

17 (f) The nature and location of the evidence;

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

20 (h) The familiarity of the court of each state with the facts and  
21 issues in the proceeding; and

22 (i) If an appointment were made, the court's ability to monitor the  
23 conduct of the guardian of the person or guardian of the estate.

24 NEW SECTION. **Sec. 13.** (1) If at any time a court of this state  
25 determines that it acquired jurisdiction to appoint a guardian or issue  
26 a protective order because of unjustifiable conduct, the court may:

27 (a) Decline to exercise jurisdiction;

28 (b) Exercise jurisdiction for the limited purpose of fashioning an  
29 appropriate remedy to ensure the health, safety, and welfare of the  
30 respondent or the protection of the respondent's property or prevent a  
31 repetition of the unjustifiable conduct, including staying the  
32 proceeding until a petition for the appointment of a guardian or  
33 issuance of a protective order is filed in a court of another state  
34 having jurisdiction; or

35 (c) Continue to exercise jurisdiction after considering:

36 (i) The extent to which the respondent and all persons required to



1 be notified of the proceedings have acquiesced in the exercise of the  
2 court's jurisdiction;

3 (ii) Whether it is a more appropriate forum than the court of any  
4 other state under the factors set forth in section 12(3) of this act;  
5 and

6 (iii) Whether the court of any other state would have jurisdiction  
7 under factual circumstances in substantial conformity with the  
8 jurisdictional standards of section 9 of this act.

9 (2) If a court of this state determines that it acquired  
10 jurisdiction to appoint a guardian or issue a protective order because  
11 a party seeking to invoke its jurisdiction engaged in unjustifiable  
12 conduct, it may assess against that party necessary and reasonable  
13 expenses, including attorneys' fees, investigative fees, court costs,  
14 communication expenses, witness fees and expenses, and travel expenses.  
15 The court may not assess fees, costs, or expenses of any kind against  
16 this state or a governmental subdivision, agency, or instrumentality of  
17 this state unless authorized by law other than this act.

18 NEW SECTION. **Sec. 14.** If a petition for the appointment of a  
19 guardian or issuance of a protective order is brought in this state and  
20 this state was not the respondent's home state on the date the petition  
21 was filed, in addition to complying with the notice requirements of  
22 this state, notice of the petition must be given to those persons who  
23 would be entitled to notice of the petition if a proceeding were  
24 brought in the respondent's home state. The notice must be given in  
25 the same manner as notice is required to be given in this state.

26 NEW SECTION. **Sec. 15.** Except for a petition for the appointment  
27 of a guardian in an emergency or issuance of a protective order limited  
28 to property located in this state under section 10(1) (a) or (b) of  
29 this act, if a petition for the appointment of a guardian or issuance  
30 of a protective order is filed in this state and in another state and  
31 neither petition has been dismissed or withdrawn, the following rules  
32 apply:

33 (1) If the court in this state has jurisdiction under section 9 of  
34 this act, it may proceed with the case unless a court in another state  
35 acquires jurisdiction under provisions similar to section 9 of this act  
36 before the appointment or issuance of the order.

1 (2) If the court in this state does not have jurisdiction under  
2 section 9 of this act, whether at the time the petition is filed or at  
3 any time before the appointment or issuance of the order, the court  
4 shall stay the proceeding and communicate with the court in the other  
5 state. If the court in the other state has jurisdiction, the court in  
6 this state shall dismiss the petition unless the court in the other  
7 state determines that the court in this state is a more appropriate  
8 forum.

9 **ARTICLE 3**

10 **TRANSFER OF GUARDIANSHIP**

11 NEW SECTION. **Sec. 16.** (1) A guardian of the person or guardian of  
12 the estate appointed in this state may petition the court to transfer  
13 the guardianship to another state.

14 (2) Notice of a petition under subsection (1) of this section must  
15 be given to the persons that would be entitled to notice of a petition  
16 in this state for the appointment of a guardian of the person or  
17 guardian of the estate.

18 (3) On the court's own motion or on request of the guardian of the  
19 person or guardian of the estate, the incapacitated or protected  
20 person, or other person required to be notified of the petition, the  
21 court shall hold a hearing on a petition filed pursuant to subsection  
22 (1) of this section.

23 (4) The court shall issue an order provisionally granting a  
24 petition to transfer a guardianship and shall direct the guardian of  
25 the person or guardian of the estate to petition for guardianship in  
26 the other state if the court is satisfied that the guardianship will be  
27 accepted by the court in the other state and the court finds that:

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

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

34 (c) Plans for care and services for the incapacitated person in the  
35 other state are reasonable and sufficient.

1 (5) The court shall issue a provisional order granting a petition  
2 to transfer a guardianship of the estate and shall direct the guardian  
3 of the estate to petition for guardianship of the estate or  
4 conservatorship in the other state if the court is satisfied that the  
5 guardianship of the estate will be accepted by the court of the other  
6 state and the court finds that:

7 (a) The protected person is physically present in or is reasonably  
8 expected to move permanently to the other state, or the protected  
9 person has a significant connection to the other state considering the  
10 factors in section 7(2) of this act;

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

15 (c) Adequate arrangements will be made for management of the  
16 protected person's property.

17 (6) The court shall issue a final order confirming the transfer and  
18 terminating the guardianship of the person or guardianship of the  
19 estate upon its receipt of:

20 (a) A provisional order accepting the proceeding from the court to  
21 which the proceeding is to be transferred which is issued under  
22 provisions similar to section 17 of this act; and

23 (b) The documents required to terminate a guardianship of the  
24 person or guardianship of the estate in this state.

25 NEW SECTION. **Sec. 17.** (1) To confirm transfer of a guardianship  
26 or conservatorship transferred to this state under provisions similar  
27 to section 16 of this act, the guardian or conservator must petition  
28 the court in this state to accept the guardianship or conservatorship.  
29 The petition must include a certified copy of the other state's  
30 provisional order of transfer.

31 (2) Notice of a petition under subsection (1) of this section must  
32 be given to those persons that would be entitled to notice if the  
33 petition were a petition for the appointment of a guardian or issuance  
34 of a protective order in both the transferring state and this state.  
35 The notice must be given in the same manner as notice is required to be  
36 given in this state.

1 (3) On the court's own motion or on request of the guardian or  
2 conservator, the incapacitated or protected person, or other person  
3 required to be notified of the proceeding, the court shall hold a  
4 hearing on a petition filed pursuant to subsection (1) of this section.

5 (4) The court shall issue an order provisionally granting a  
6 petition filed under subsection (1) of this section unless:

7 (a) An objection is made and the objector establishes that transfer  
8 of the proceeding would be contrary to the interests of the  
9 incapacitated or protected person; or

10 (b) The guardian or conservator is ineligible for appointment in  
11 this state.

12 (5) The court shall issue a final order accepting the proceeding  
13 and appointing the guardian or conservator as guardian of the person or  
14 guardian of the estate in this state upon its receipt from the court  
15 from which the proceeding is being transferred of a final order issued  
16 under provisions similar to section 16 of this act transferring the  
17 proceeding to this state.

18 (6) Not later than ninety days after issuance of a final order  
19 accepting transfer of a guardianship or conservatorship, the court  
20 shall determine whether the guardianship of the person or guardianship  
21 of the estate needs to be modified to conform to the law of this state.

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

26 (8) The denial by a court of this state of a petition to accept a  
27 guardianship or conservatorship transferred from another state does not  
28 affect the ability of the guardian or conservator to seek appointment  
29 as guardian or guardian of the estate in this state if the court has  
30 jurisdiction to make an appointment other than by reason of the  
31 provisional order of transfer.

32 **ARTICLE 4**

33 **REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES**

34 NEW SECTION. **Sec. 18.** If a guardian has been appointed in another  
35 state and a petition for the appointment of a guardian is not pending  
36 in this state, the guardian appointed in the other state, after giving

1 notice to the appointing court of an intent to register, may register  
2 the guardianship order in this state by filing as a foreign judgment in  
3 a court, in any appropriate county of this state, certified copies of  
4 the order and letters of office.

5 NEW SECTION. **Sec. 19.** If a guardian of the estate or conservator  
6 has been appointed in another state and a petition for a protective  
7 order is not pending in this state, the guardian of the estate or  
8 conservator appointed in the other state, after giving notice to the  
9 appointing court of an intent to register, may register the protective  
10 order in this state by filing as a foreign judgment in a court of this  
11 state, in any county in which property belonging to the protected  
12 person is located, certified copies of the order and letters of office  
13 and of any bond.

14 NEW SECTION. **Sec. 20.** (1) Upon registration of a guardianship or  
15 protective order from another state, the guardian or conservator may  
16 exercise in this state all powers authorized in the order of  
17 appointment except as prohibited under the laws of this state,  
18 including maintaining actions and proceedings in this state and, if the  
19 guardian or conservator is not a resident of this state, subject to any  
20 conditions imposed upon nonresident parties.

21 (2) A court of this state may grant any relief available under this  
22 act and other law of this state to enforce a registered order.

23 **ARTICLE 5**  
24 **MISCELLANEOUS PROVISIONS**

25 NEW SECTION. **Sec. 21.** In applying and construing this uniform  
26 act, consideration must be given to the need to promote uniformity of  
27 the law with respect to its subject matter among states that enact it.

28 NEW SECTION. **Sec. 22.** This act modifies, limits, and supersedes  
29 the federal electronic signatures in global and national commerce act,  
30 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede  
31 section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic  
32 delivery of any of the notices described in section 103(b) of that act,  
33 15 U.S.C. Sec. 7003(b).

1        NEW SECTION.    **Sec. 23.**    (1) This act applies to guardianship and  
2 protective proceedings filed on or after the effective date of this  
3 act.

4        (2) Sections 1 through 6 and 16 through 22 apply to proceedings  
5 filed before the effective date of this act, regardless of whether a  
6 guardianship or protective order has been issued.

7        NEW SECTION.    **Sec. 24.**    This act takes effect January 1, 2010.

8        NEW SECTION.    **Sec. 25.**    Article headings used in this act are not  
9 any part of the law.

10       NEW SECTION.    **Sec. 26.**    Sections 1 through 25 of this act  
11 constitute a new chapter in Title 11 RCW.

--- END ---