

OREGON STATE BAR
Legislative Proposal
Part I – Legislative Summary

RE: SB 238 Implementation of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

Submitted by: Estate Planning and Administration Section

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1. Does this amend current law or program?

No, this would be a new provision in the statutes.

2. PROBLEM PRESENTED (including level of severity):

Because the U.S. has more than 50 guardianship systems, including Oregon's guardianship system, problems of determining jurisdiction are frequent. Questions of which state has jurisdiction to appoint a guardian or conservator can arise between states or between a state and a foreign country. More frequently, problems arise because the individual has contacts with more than one American state.

In nearly all American states, a guardian may be appointed by a court in a state in which the individual is domiciled or is physically present, and in nearly all American states, a conservator may be appointed by a court in a state in which the individual is domiciled or has property. These general principles hold true for Oregon. Contested cases in which courts in more than one state have jurisdiction are becoming more common. Sometimes a case arises because the adult is physically located in a state other than the adult's domicile. Sometimes the case arises because of uncertainty as to the adult's domicile, particularly if the adult owns a vacation home in another state. There is a need for an effective mechanism for resolving multi-jurisdictional disputes.

Oftentimes, problems arise even absent a dispute. Even if everyone agrees that a guardianship or conservatorship should be moved to another state, few states have streamlined procedures for transferring a proceeding to another state or for accepting such a transfer. In most states, including Oregon, all of the procedures for an original appointment must be repeated, a time consuming and expensive prospect.

3. SOLUTION:

The National Conference of Commissions on Uniform State Laws developed a uniform act to address these issues: multi-jurisdictional questions, transfer problems, and out-of-state recognition problems. The NCCUSL approved the Act at its 2007 Annual Meeting. Other states will likely adopt the Act, and multi-state jurisdictional issues that arise in Oregon or involve Oregon residents may be more easily resolved if Oregon joins with other states in adopting the Act.

A. Definitions of Home State and Significant-Connection State

To determine which court has primary jurisdiction under the Act, one must determine the individual's "home state" and "significant-connection state." A "home state" is the state in which the individual was physically present for at least six consecutive months immediately before the commencement of the guardianship or protective proceeding. A "significant-connection state," which is a potentially broader concept, means the state in which the individual has a significant connection other than mere physical presence, and where substantial evidence concerning the individual is available. Factors that may be considered in deciding whether a particular respondent has a significant connection include:

- the location of the respondent's family and others required to be notified of the guardianship or protective proceeding;
- the length of time a respondent was at any time physically present in the state and the duration of any absences;
- the location of the respondent's property; and
- the extent to which the respondent has ties to the state such as voting registration, filing of state or local tax returns, vehicle registration, driver's license, social relationships, and receipt of services.

B. Priority for Jurisdiction

Home State: The home state has primary jurisdiction to appoint a guardian or conservator or enter another protective order, a priority that continues for up to six months following the move to another state.

Significant-Connection State: A significant-connection state has jurisdiction if the individual does not have a home state or the home state has declined jurisdiction on the basis that the significant-connection state is a more appropriate forum. To facilitate appointments in the average case in which jurisdiction is not in dispute, a significant-connection state also has jurisdiction if no proceeding has been commenced in the respondent's home state or another significant-connection state, no objection to the court's jurisdiction has been filed, and the court concludes that it is a more appropriate forum than the court.

Another State: A court in another state has jurisdiction if the home state and all significant-connection states have declined jurisdiction or the individual does not have a home state or significant-connection state.

C. Transfer to Another State

To make transfers, court orders are necessary both from the court transferring the case and from the court accepting the case. Generally, to transfer a case, the transferring court must find that the individual will move permanently to another state, that adequate arrangements have been made for the individual or the individual's property in the other state, and that the court is satisfied the case will be accepted by the court in the new state. To assure continuity, the court in the original state cannot dismiss the local proceeding until the order

from the other state accepting the case is filed with the original court. To expedite the transfer process, the court in the accepting state must give deference to the transferring court's finding of incapacity and selection of the guardian or conservator.

D. Out of State Enforcement

To facilitate enforcement of guardianship and protective orders in other states, a guardian or conservator will be authorized to register these orders in other states. Upon registration, the guardian or conservator may exercise all the powers authorized in the order except as prohibited by the laws of the registration state.

4. PUBLIC POLICY IMPLICATION of this proposed legislative change:

This bill should be a significant benefit to elder persons and their families, and it should facilitate the work of probate court judges.

5. Could the problem be addressed through a NON-LEGISLATIVE SOLUTION, such as administrative rule or education? No.

6. COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL? If so, have you suggested it to the section or group?

The Elder Law Section was consulted about the legislation, was supportive of the proposal, but did not wish to take the proposal forward as a section.

7. IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED or interested in this change. Who would support it and who would oppose it?

Elder Law lawyers and Probate Judges. Both groups should support this bill.