

No. 2012-108

AN ACT

HB 1720

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, providing for uniform adult guardianship and protective proceedings jurisdiction.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 20 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 59
UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE
PROCEEDINGS JURISDICTION

Subchapter

- A. General Provisions***
- B. Jurisdiction***
- C. Transfer of Guardianship or Conservatorship***
- D. Registration and Recognition of Orders from Other States***
- E. Miscellaneous Provisions***

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

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§ 5901. Short title of chapter.

This chapter shall be known and may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 5902. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Adult." An individual who has attained 18 years of age.

"Conservator." A person appointed by the court to administer the property of an adult, including a person appointed under Chapter 55 (relating to incapacitated persons) as the guardian of the estate of an adult.

"Guardian." *A person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Chapter 55 (relating to incapacitated persons) as the guardian of the person of an adult.*

"Guardianship order." *An order appointing a guardian.*

"Guardianship proceeding." *A judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.*

"Incapacitated person." *An adult for whom a guardian has been appointed.*

"Party." *The respondent, petitioner, guardian, conservator or any other person allowed by the court to participate in a guardianship or protective proceeding.*

"Person." *Notwithstanding 1 Pa.C.S. § 1991 (relating to definitions) and except in the term "incapacitated person" or "protected person," any:*

- (1) individual;*
- (2) corporation;*
- (3) business trust;*
- (4) estate;*
- (5) trust;*
- (6) partnership;*
- (7) limited liability company;*
- (8) association;*
- (9) joint venture;*
- (10) public corporation;*
- (11) government or governmental subdivision, agency or instrumentality; or*
- (12) other legal or commercial entity.*

"Protected person." *An adult for whom a protective order has been issued.*

"Protective order." *An order appointing a conservator or other order related to management of an adult's property.*

"Protective proceeding." *A judicial proceeding in which a protective order is sought or has been issued.*

"Record." *Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.*

"Respondent." *An adult for whom a protective order or the appointment of a guardian is sought.*

"State." *A state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, a federally recognized Indian tribe or any territory or insular possession subject to the jurisdiction of the United States.*

§ 5903. *International application of chapter.*

A court of this Commonwealth may treat a foreign country as if it were a state for the purpose of applying this subchapter and Subchapters B (relating to jurisdiction), C (relating to transfer of guardianship or conservatorship) and E (relating to miscellaneous provisions).

§ 5904. *Communication between courts.*

(a) *Authorization.*—A court of this Commonwealth may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

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

§ 5905. *Cooperation between courts.*

(a) *Initiation.*—In a guardianship or protective proceeding in this Commonwealth, a court of this Commonwealth may request the appropriate court of another state to do any of the following:

(1) Hold an evidentiary hearing.

(2) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state.

(3) Order that an evaluation or assessment be made of the respondent.

(4) Order any appropriate investigation of a person involved in a proceeding.

(5) Forward to the court of this Commonwealth a certified copy of the transcript or other record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise produced under paragraph (2) and any evaluation or assessment prepared in compliance with an order under paragraph (3) or (4).

(6) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person.

(7) Issue an order authorizing the release of medical, financial, criminal or other relevant information in that state, including protected health information as defined in 45 CFR 160.103 (relating to definitions).

(8) Take or refrain from taking any other action to facilitate the prompt and fair resolution of matters subject to this chapter.

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

§ 5906. *Taking testimony in another state.*

(a) *General procedures.*—In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this Commonwealth for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

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

SUBCHAPTER B JURISDICTION

Sec.

5911. Definitions; significant connection factors.

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§ 5911. Definitions; significant connection factors.

(a) Definitions.—The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Emergency." A circumstance:

(1) which likely will result in substantial harm to a respondent's health, safety or welfare; and

(2) for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

"Home state." One of the following:

(1) The state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian.

(2) If the requirement of paragraph (1) is not met, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

"Significant-connection state." A state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(b) Significant connection factors.—In determining under sections 5913 (relating to jurisdiction) and 5921(e) (relating to transfer of guardianship or conservatorship to another state) whether a respondent has a significant connection with a particular state, the court shall consider all of the following:

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

(2) *The length of time the respondent at any time was physically present in the state and the duration of any absence.*

(3) *The location of the respondent's property.*

(4) *The extent to which the respondent has ties to the state. This paragraph includes voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship and receipt of services.*

§ 5912. Exclusive basis.

Notwithstanding any inconsistent provisions of Chapter 55 (relating to incapacitated persons), this subchapter provides the exclusive jurisdictional basis for a court of this Commonwealth to appoint a guardian or issue a protective order for an adult.

§ 5913. Jurisdiction.

A court of this Commonwealth has jurisdiction to appoint a guardian or issue a protective order for a respondent if one of the following paragraphs applies:

(1) *This Commonwealth is the respondent's home state.*

(2) *On the date the petition is filed, all of the following subparagraphs apply:*

(i) *This Commonwealth is a significant-connection state.*

(ii) *One of the following clauses applies:*

(A) *The respondent does not have a home state, or a court of the respondent's home state has declined to exercise jurisdiction because this Commonwealth is a more appropriate forum or has declined to exercise jurisdiction in a manner not inconsistent with a determination that this Commonwealth is a more appropriate forum.*

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

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

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

(III) *the court in this Commonwealth concludes that it is an appropriate forum under the factors set forth in section 5916 (relating to appropriate forum).*

(3) *All of the following subparagraphs apply:*

(i) *This Commonwealth does not have jurisdiction under either paragraph (1) or (2).*

(ii) *The respondent's home state and all significant-connection states have declined to exercise jurisdiction because this Commonwealth is the more appropriate forum or has declined to exercise jurisdiction in a manner not inconsistent with a determination that this Commonwealth is a more appropriate forum.*

(iii) *Jurisdiction in this Commonwealth is consistent with the Constitution of the United States and the Constitution of Pennsylvania.*

(4) *The requirements for special jurisdiction under section 5914 (relating to special jurisdiction) are met.*

§ 5914. Special jurisdiction.

(a) *Scope.—Notwithstanding the requirements of section 5513 (relating to emergency guardian) as it relates to limiting the duration of an order appointing an emergency guardian of the person or estate, a court of this Commonwealth lacking jurisdiction under section 5913(1), (2) or (3) (relating to jurisdiction) has special jurisdiction to do any of the following:*

(1) *Appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in this Commonwealth.*

(2) *Issue a protective order with respect to real or tangible personal property located in this Commonwealth, including, in an emergency, a protective order for a term not exceeding 90 days.*

(3) *Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 5921 (relating to transfer of guardianship or conservatorship to another state).*

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

§ 5915. Exclusive and continuing jurisdiction.

Except as otherwise provided in section 5914 (relating to special jurisdiction), a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

§ 5916. Appropriate forum.

(a) *Decline to exercise jurisdiction.—A court of this Commonwealth having jurisdiction under section 5913 (relating to jurisdiction) to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.*

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

(c) *Consideration.—In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:*

(1) *any expressed preference of the respondent;*

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

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

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

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

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

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

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

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

§ 5917. Jurisdiction declined by reason of conduct.

(a) **Judicial options.**—*If a court of this Commonwealth determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may exercise an option under any of the following paragraphs:*

(1) *Decline to exercise jurisdiction.*

(2) *Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to:*

(i) *ensure the health, safety and welfare of the respondent or the protection of the respondent's property; or*

(ii) *prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction.*

(3) *Continue to exercise jurisdiction after considering:*

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

(ii) *whether it is a more appropriate forum than the court of any other state under the factors set forth in section 5916(c) (relating to appropriate forum); and*

(iii) *whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 5913 (relating to jurisdiction).*

(b) **Costs and fees.**—*If a court of this Commonwealth determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses and travel expenses. The court may not assess fees, costs or expenses of any kind against the Commonwealth, a political subdivision or an instrumentality of the Commonwealth unless authorized by law other than this chapter.*

§ 5918. Notice of proceeding.

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

§ 5919. Proceedings in more than one state.

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this Commonwealth under section 5914(a)(1) or (2) (relating to special jurisdiction), if a petition for the appointment of a guardian or issuance of a protective order is filed in this Commonwealth and in another state and neither petition has been dismissed or withdrawn, all of the following apply:

(1) If the court in this Commonwealth has jurisdiction under section 5913 (relating to jurisdiction), it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 5913 before the appointment or issuance of the order.

(2) If the court in this Commonwealth does not have jurisdiction under section 5913, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this Commonwealth shall dismiss the petition unless the court in the other state determines that the court in this Commonwealth is a more appropriate forum.

SUBCHAPTER C **TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP**

Sec.

5921. Transfer of guardianship or conservatorship to another state.

5922. Accepting guardianship or conservatorship transferred from another state.

§ 5921. Transfer of guardianship or conservatorship to another state.

(a) Petition.—A guardian or conservator appointed in this Commonwealth may petition the court to transfer the guardianship or conservatorship to another state.

(b) Notice.—Notice of a petition under subsection (a) must be given to the persons that would be entitled to notice of a petition in this Commonwealth for the appointment of a guardian or conservator.

(c) Hearing.—The court shall hold a hearing on a petition filed under subsection (a):

(1) on its own motion; or

(2) on request of:

(i) the guardian or conservator;

(ii) the incapacitated or protected person; or

(iii) another person required to be notified of the petition.

(d) *Provisional guardianship order.*—The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

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

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

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

(e) *Provisional conservatorship order.*—The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) the protected person is physically present in or is reasonably expected to move permanently to the other state or the protected person has a significant connection to the other state considering the factors in section 5911(b) (relating to definitions; significant connection factors);

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

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

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

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 5922 (relating to accepting guardianship or conservatorship transferred from another state); and

(2) the documents required to terminate a guardianship or conservatorship in this Commonwealth.

§ 5922. *Accepting guardianship or conservatorship transferred from another state.*

(a) *Petition.*—To confirm transfer of a guardianship or conservatorship transferred to this Commonwealth under provisions similar to section 5921 (relating to transfer of guardianship or conservatorship to another state), the guardian or conservator must petition the court in this Commonwealth to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(b) *Notice.*—Notice of a petition under subsection (a) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both

the transferring state and this Commonwealth. The notice must be given in the same manner as notice is required to be given in this Commonwealth.

(c) Hearing.—The court shall hold a hearing on a petition filed under subsection (a):

(1) on its own motion; or

(2) on request of:

(i) the guardian or conservator;

(ii) the incapacitated or protected person; or

(iii) another person required to be notified of the petition.

(d) Provisional order.—The court shall issue an order provisionally granting a petition filed under subsection (a) unless:

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

(2) the guardian or conservator is ineligible for appointment in this Commonwealth.

(e) Final order.—The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this Commonwealth upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 5921 transferring the proceeding to this Commonwealth.

(f) Modification.—Not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship requires modification to conform to the laws of this Commonwealth.

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

(h) Effect of denial.—The denial by a court of this Commonwealth of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this Commonwealth under Chapter 55 (relating to incapacitated persons) if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

SUBCHAPTER D REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

Sec.

5931. Registration of guardianship orders.

5932. Registration of protective orders.

5933. Effect of registration.

§ 5931. Registration of guardianship orders.

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

§ 5932. Registration of protective orders.

If a conservator has been appointed in another state and a petition for a protective order is not pending in this Commonwealth, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this Commonwealth by filing as a foreign judgment in a court of this Commonwealth, in any judicial district in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

§ 5933. Effect of registration.

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

(b) Relief authorized.—A court of this Commonwealth may grant any relief available under this chapter and other law of this Commonwealth to enforce a registered order.

SUBCHAPTER E MISCELLANEOUS PROVISIONS

Sec.

5991. Uniformity of application and construction.

5992. Relation to Electronic Signatures in Global and National Commerce Act.

§ 5991. Uniformity of application and construction.

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

§ 5992. Relation to Electronic Signatures in Global and National Commerce Act.

(a) General rule.—Except as set forth in subsection (b), this chapter modifies, limits or supersedes the Electronic Signatures in Global and National Commerce Act (Public Law 106-229, 15 U.S.C. § 7001 et seq.).

(b) Exceptions.—

(1) This chapter does not modify, limit or supersede section 101(c) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001(c)).

(2) This chapter does not authorize electronic delivery of any of the notices described in section 103(b) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7003(b)).

Section 2. Applicability is as follows:

(1) Subject to paragraph (2), the addition of 20 Pa.C.S. Ch. 59 applies to guardianship and protective proceedings begun on or after the effective date of this act.

(2) The addition of the following provisions of 20 Pa.C.S. Ch. 59 apply to proceedings begun before the effective date of this section, regardless of whether a guardianship or protective order has been issued:

- (i) Subchapter A.
- (ii) Subchapter C.
- (iii) Subchapter D.
- (iv) Subchapter E.

Section 3. This act shall take effect in 60 days.

APPROVED—The 5th day of July, A.D. 2012

TOM CORBETT