

HOUSE No. 2181

The Commonwealth of Massachusetts

PRESENTED BY:

Anne M. Gobi

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act regarding uniform adult guardianship.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Anne M. Gobi</i>	<i>5th Worcester</i>	<i>1/20/2011</i>

HOUSE No. 2181

By Ms. Gobi of Spencer, a petition (accompanied by bill, House, No. 2181) of Anne M. Gobi relative to uniform adult guardianship. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act regarding uniform adult guardianship.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. (a) Following the appointment of a guardian or conservator or entry of
2 another protective order, the court making the appointment or entering the order may transfer the
3 proceeding to a court in or another county in this state or in the case of a minor to another state if
4 the court is satisfied that a transfer will serve the best interest of the ward or protected person.

5 (b) A guardian of a minor, conservator of a minor, or like fiduciary for a minor
6 appointed in another state may petition the court for appointment as a guardian or

7 conservator in this state if the state has jurisdiction. The appointment may be made upon
8 proof of appointment in the other state and presentation of a certified copy of the portion of the
9 court record in the other state specified by the court in this state. Notice of hearing on the
10 petition, together with a copy of the petition, must be given to the ward or protected person, if
11 the ward or protected person has attained 14 years of age, and to the persons who would be
12 entitled to notice if the regular procedures for appointment of a guardian or conservator under

13 this article were applicable. The court shall make the appointment in this state unless it concludes
14 that the appointment would not be in the best interest of

15 the ward or protected person. Upon the filing of an acceptance of office and any required
16 bond, the court shall issue appropriate letters of guardianship or conservatorship. Within 14 days
17 after an appointment, the guardian or conservator shall send or deliver a copy of the order of
18 appointment to the ward or protected person, if the ward or protected person has attained 14
19 years of age, and to all persons given notice of the hearing on the petition.

20 SECTION 2. Definitions.

21 (a) "Adult" means an individual who has attained 18 years of age.

22 (b) "Conservator" means a person appointed by the court to administer the property
23 of an adult.

24 (c) "Guardian" means a person appointed by the court to make decisions regarding
25 the person of an adult.

26 (d) "Guardianship order" means an order appointing a guardian.

27 (e) "Guardianship proceeding" means a judicial proceeding in which an order for the
28 appointment of a guardian is sought or has been issued.

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

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

32 (h) "Person," except in the term incapacitated person or protected person, means an
33 individual, corporation, business trust, estate, trust, partnership, limited liability company,
34 association, joint venture, public corporation, government or governmental subdivision, agency,
35 or instrumentality, or any other legal or commercial entity.

36 (i) "Protected person" means an adult for whom a protective order has been issued.

37 (j) "Protective order" means an order appointing a conservator or any other order
38 related to management of an adult's property.

39 (k) "Protective proceeding" means a judicial proceeding in which an protective
40 order is sought or has been issued.

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

43 (m) "Respondent" means an adult for whom a protective order or the appointment
44 of a guardian is sought.

45 (n) "State" means a state of the United States, the District of Columbia, the
46 commonwealth of Puerto Rico, the United States Virgin Islands, a federally recognized
47 Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

48 SECTION 3. A court of this state may treat a foreign country as if it were a state for the
49 purpose of applying the Sections of this Act.

50 SECTION 4. (a) A court of this state may communicate with a court in another state
51 concerning a proceeding arising under the Sections of this Act. The court may allow the parties
52 to participate in the communication. Except as otherwise provided in paragraph (b), the court
53 shall make a record of the communication. The record may be limited to the fact that the
54 communication occurred.

55 (c) Courts may communicate concerning schedules, calendars, court records, and
56 other administrative matters without making a record.

57 SECTION 5. (a) In a guardianship or protective proceeding in this state, a court of this
58 state may request the appropriate court of another state to do any one or more of the following:

59 (1) hold an evidentiary hearing;

60 (2) order a person in that state to produce evidence or give testimony pursuant to
61 procedures of that state;

62 (3) order that an evaluation or assessment be made of the respondent;

63 (4) order any appropriate investigation of a person involved in a proceeding;

64 (5) forward to the court of this state a certified copy of the transcript or other record of a
65 hearing under clause (1) or any other proceeding, any evidence otherwise produced under clause
66 (2), and any evaluation or assessment prepared in compliance with an order under clause (3) or
67 (4);

68 (6) issue any order necessary to assure the appearance in the proceeding of a

69 person whose presence is necessary for the court to make a determination, including the
70 respondent or the incapacitated or protected person; and

71 (7) issue an order authorizing the release of medical, financial, criminal, or other
72 relevant information in that state, including protected health information as defined in
73 Code of Federal Regulations, title 45, section 164.504.

74 (b) If a court of another state in which a guardianship or protective proceeding is pending
75 requests assistance of the kind provided in paragraph (a), a court of this state has jurisdiction for
76 the limited purpose of granting the request or making reasonable efforts to comply with the
77 request.

78 SECTION 6. (a) In a guardianship or protective proceeding, in addition to other
79 procedures that may be available, testimony of a witness who is located in another state may be
80 offered by deposition or other means allowable in this state for testimony taken in another state.
81 The court on its own motion may order that the testimony of a witness be taken in another
82 state and may prescribe the manner in which and the terms upon which the testimony
83 is to be taken.

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

88 (c) Documentary evidence transmitted from another state to a court of this state by

89 technological means that do not produce an original writing may not be excluded from
90 evidence on an objection based on the best evidence rule.

91 SECTION 7. (a) For purposes of this Act: (1) "emergency" means a circumstance that
92 likely will result in substantial harm to

93 a respondent's health, safety, or welfare, and for which the appointment of a guardian is
94 necessary because no other person has authority and is willing to act on the respondent's behalf;

95 (2) "home state" means the state in which the respondent was physically present,
96 including any period of temporary absence, for at least six consecutive months

97 immediately before the filing of a petition for a protective order or the appointment of a
98 guardian; or if none, the state in which the respondent was physically present, including any
99 period of temporary absence, for at least six consecutive months ending within the six months
100 prior to the filing of the petition; and

101 (3) "significant-connection state" means a state, other than the home state, with
102 which a respondent has a significant connection other than mere physical presence and in
103 which substantial evidence concerning the respondent is available.

104 (b) In determining whether a respondent has a significant connection with a particular
105 state, the court shall consider:

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

108 (2) the length of time the respondent at any time was physically present in the state and
109 the duration of any absence;

110 (3) the location of the respondent's property; and

111 (4) the extent to which the respondent has ties to the state such as voting registration,
112 state or local tax return filing, vehicle registration, driver's license, social relationship, and
113 receipt of services.

114 SECTION 8.

115 A court of this state has jurisdiction to appoint a guardian or issue a protective order for a
116 respondent if:

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

118 (2) on the date the petition is filed, this state is a significant-connection state and: (i) the
119 respondent does not have a home state or a court of the respondent's home

120 state has declined to exercise jurisdiction because this state is a more appropriate forum;

121 or (ii) the respondent has a home state, a petition for an appointment or order is not pending in a

122 court of that state or another significant-connection state, and, before the court makes the

123 appointment or issues the order:

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

125 (B) an objection to the court's jurisdiction is not filed by a person required to be notified

126 of the proceeding; and

127 (C) the court in this state concludes that it is an appropriate forum under the factors set
128 forth in this Act;

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

133 (4) the requirements for special jurisdiction under this Act are met.

134 SECTION 9. (a) A court of this state has jurisdiction to do any of the following:

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

137 (2) issue a protective order with respect to real or tangible personal property located
138 in this state; and

139 (3) appoint a guardian or conservator for an incapacitated or protected person for
140 whom a provisional order to transfer the proceeding from another state has been issued
141 under procedures similar to this Act.

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

146 SECTION 10. Except as otherwise provided in this Act, a court that has appointed a
147 guardian or issued a protective order consistent with state law has exclusive and continuing
148 jurisdiction over the proceeding until it is terminated by the court or the appointment or order
149 expires by its own terms.

150 SECTION 11. (a) A court of this state having jurisdiction to appoint a guardian or issue a
151 protective order may decline to exercise its jurisdiction if it determines at any time that a court of
152 another state is a more appropriate forum.

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

157 (c) In determining whether it is an appropriate forum, the court shall consider all
158 relevant factors, including:

159 (1) any expressed preference of the respondent;

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

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

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

- 165 (5) the financial circumstances of the respondent's estate;
- 166 (6) the nature and location of the evidence;
- 167 (7) the ability of the court in each state to decide the issue expeditiously and the
168 procedures necessary to present evidence;
- 169 (8) the familiarity of the court of each state with the facts and issues in the
170 proceeding; and
- 171 (9) if an appointment were made, the court's ability to monitor the conduct of the
172 guardian or conservator.

173 SECTION 12. (a) If at any time a court of this state determines that it acquired
174 jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the
175 court may:

- 176 (1) decline to exercise jurisdiction;
- 177 (2) exercise jurisdiction for the limited purpose of fashioning an appropriate
178 remedy to ensure the health, safety, and welfare of the respondent or the protection of the
179 respondent's property or prevent a repetition of the unjustifiable conduct, including staying the
180 proceeding until a petition for the appointment of a guardian or issuance of a protective order is
181 filed in a court of another state having jurisdiction; or
- 182 (3) continue to exercise jurisdiction after considering:

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

185 (ii) whether it is a more appropriate forum than the court of any other state under the
186 factors set forth in this Act; and

187 (iii) whether the court of any other state would have jurisdiction under factual
188 circumstances in substantial conformity within the jurisdictional standards.

189 (b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or
190 issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable
191 conduct, it may assess against that party necessary and reasonable expenses, including attorney
192 fees, investigative fees, court costs, communication expenses, witness fees and expenses, and
193 travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or
194 a governmental subdivision, agency, or instrumentality of this state unless authorized by law.

195 SECTION 13. If a petition for the appointment of a guardian or issuance of a protective
196 order is brought in this state and this state was not the respondent's home state on the date the
197 petition was filed, in addition to complying with the notice requirements of this state, notice of
198 the petition must be given to those persons who would be entitled to notice of the petition if a
199 proceeding were brought in the respondent's home state. The notice must be given in the same
200 manner as notice is required to be given in this state.

201 SECTION 14. Except for a petition for the appointment of a guardian in an emergency
202 or issuance of a protective order limited to property located in this state, if a petition for the

203 appointment of a guardian or issuance of a protective order is filed in this state and in another
204 state and neither petition has been dismissed or withdrawn, the following rules apply:

205 (1) If the court in this state has jurisdiction, it may proceed

206 with the case unless a court in another state acquires jurisdiction before the appointment
207 or issuance of the order.

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

213 SECTION 15. (a) A guardian or conservator appointed in this state may petition the
214 court to transfer the guardianship or conservatorship to another state.

215 (b) Notice of a petition under paragraph (a) must be given to the persons that
216 would be entitled to notice of a petition in this state for the appointment of a guardian or
217 conservator.

218 (c) On the court's own motion or on request of the guardian or conservator, the
219 incapacitated or protected person, or other person required to be notified of the petition,
220 the court shall hold a hearing on a petition filed pursuant to paragraph (a).

221 (d) The court shall issue an order provisionally granting a petition to transfer a

222 guardianship and shall direct the guardian to petition for guardianship in the other state if
223 the court is satisfied that the guardianship will be accepted by the court in the other state and the
224 court finds that:

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

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

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

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

236 (1) the protected person is physically present in or is reasonably expected to move
237 permanently to the other state, or the protected person has a significant connection to the other
238 state considering the factors in section 524.5-701, paragraph (b);

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

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

244 (f) The court shall issue a final order confirming the transfer and terminating the
245 guardianship or conservatorship upon its receipt of:

246 (1) a provisional order accepting the proceeding from the court to which the
247 proceeding is to be transferred; and

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

249 SECTION 16. (a) To confirm transfer of a guardianship or conservatorship transferred to
250 this state, the guardian or conservator must petition the court in this state to accept the
251 guardianship or conservatorship. The petition must include a certified copy of the other state's
252 provisional order of transfer.

253 (b) Notice of a petition under paragraph (a) must be given to those persons that
254 would be entitled to notice if the petition were a petition for the appointment of a
255 guardian or issuance of a protective order in both the transferring state and this state. The notice
256 must be given in the same manner as notice is required to be given in this state.

257 (c) On the court's own motion or on request of the guardian or conservator, the
258 incapacitated or protected person, or other person required to be notified of the
259 proceeding, the court shall hold a hearing on a petition filed pursuant to paragraph (a).

260 (d) The court shall issue an order provisionally granting a petition filed under

261 paragraph (a) unless:

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

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

265 (e) The court shall issue a final order accepting the proceeding and appointing the
266 guardian or conservator as guardian or conservator in this state upon its receipt from
267 the court from which the proceeding is being transferred of a final order issued under
268 provisions transferring the proceeding to this state.

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

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

276 (h) The denial by a court of this state of a petition to accept a guardianship or
277 conservatorship transferred from another state does not affect the ability of the guardian
278 or conservator to seek appointment as guardian or conservator in this state under this Act if the

279 court has jurisdiction to make an appointment other than by reason of the provisional order of
280 transfer.

281 SECTION 17. If a guardian has been appointed in another state and a petition for the
282 appointment of a guardian is not pending in this state, the guardian appointed in the other state,
283 after giving notice to the appointing court of an intent to register, may register the guardianship
284 order in this state by filing as a foreign judgment in a court, in any appropriate county of this
285 state, certified copies of the order and letters of office.

286 SECTION 18. If a conservator has been appointed in another state and a petition for a
287 protective order is not pending in this state, the conservator appointed in the other state, after
288 giving notice to the appointing court of an intent to register, may register the protective order in
289 this state by filing as a foreign judgment in a court of this state, in any county in which property
290 belonging to the protected person is located, certified copies of the order and letters of office and
291 of any bond.

292 SECTION 19. (a) Upon registration of a guardianship or protective order from another
293 state, the guardian or conservator may exercise in this state all powers authorized in the order of
294 appointment except as prohibited under the laws of this state, including maintaining actions and
295 proceedings in this state and, if the guardian or conservator is not a resident of this state, subject
296 to any conditions imposed upon nonresident parties.

297 (b) A court of this state may grant relief to enforce a registered order.