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SENATE . . . . . No. 2165

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act relative to uniform adult guardianship and protective proceedings jurisdiction.

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

SECTION 1. The General Laws are hereby amended by inserting after Article V of Chapter 190B the following:-

ARTICLE 5A

UNIFORM ADULT GUARDIANSHIP AND

PROTECTIVE PROCEEDINGS JURISDICTION ACT

Part 1

GENERAL PROVISIONS

Section 5A-101. [Short Title.]

Chapter 190B, Article 5A shall be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Section 5A-102. [Definitions.]

As used in this Article, the following terms have the following meanings:

(1) “Adult” means an individual who has attained 18 years of age.

(2) “Conservator” means a person appointed by the court to administer the property of an adult, including a person appointed under Article V, Part 4.

(3) “Guardian” means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Article V, Part 3.

(4) “Guardianship order” means an order appointing a guardian.

(5) “Guardianship proceeding” means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) “Incapacitated person” means an adult for whom a guardian has been appointed.

(7) “Party” means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

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

(9) “Protected person” means an adult for whom a protective order has been issued.

(10) “Protective order” means an order appointing a conservator or other order related to management of an adult’s property.

(11) “Protective proceeding” means a judicial proceeding in which a protective order is sought or has been issued.

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

(13) “Respondent” means an adult for whom a protective order or the appointment of a guardian is sought.

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

Section 5A-103. [International Application of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.]

A court of this state may treat a foreign country as if it were a state for the purpose of applying Parts 1, 2, 3 and 5 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Section 5A-104. [Communication Between Courts.]

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under the Uniform Adult Guardianship and Protective Proceedings

50 Jurisdiction Act. The court may allow the parties to participate in the communication. Except as
51 otherwise provided in subsection (b), the court shall make a record of the communication. The
52 record may be limited to the fact that the communication occurred.

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

55 Section 5A-105. [Cooperation Between Courts.]

56 (a) In a guardianship or protective proceeding in this state, a court of this state may
57 request the appropriate court of another state to do any of the following:

58 (1) hold an evidentiary hearing;

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

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

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

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

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

70 (7) issue an order authorizing the release of medical, financial, criminal, or other
71 relevant information in that state, including protected health information as defined in 45 C.F.R.
72 Section 160.103, as amended.

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

77 Section 5A-106. [Taking Testimony In Another State.]

78 (a) In a guardianship or protective proceeding, in addition to other procedures that may
79 be available, testimony of a witness who is located in another state may be offered by deposition
80 or other means allowable in this state for testimony taken in another state. The court on its own

81 motion may order that the testimony of a witness be taken in another state and may prescribe the
82 manner in which and the terms upon which the testimony is to be taken.

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

87 (c) Documentary evidence transmitted from another state to a court of this state by
88 technological means that do not produce an original writing may not be excluded from evidence
89 on an objection based on the best evidence rule.

90 PART2

91 JURISDICTION

92 Section 5A-201. [Definitions; Significant Connection Factors.]

93 (a) As used in Part 2 of the Uniform Adult Guardianship and Protective Proceedings
94 Jurisdiction Act:

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

98 (2) "Home state" means the state in which the respondent was physically present,
99 including any period of temporary absence, for at least six consecutive months immediately
100 before the filing of a petition for a protective order or the appointment of a guardian; or if none,
101 the state in which the respondent was physically present, including any period of temporary
102 absence, for at least six consecutive months ending within the six months prior to the filing of the
103 petition.

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

107 (b) In determining under Section 5A-203 and Subsection (e) of Section 5A-301whether a
108 respondent has a significant connection with a particular state, the court shall consider:

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

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

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

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

117 Section 5A-202. [Exclusive Basis.]

118 Part 2 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
119 provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a
120 protective order for an adult.

121 Section 5A-203. [Jurisdiction.]

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

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

125 (2) on the date the petition is filed, this state is a significant-connection state and:

126 (A) the respondent does not have a home state or a court of the
127 respondent's home state has declined to exercise jurisdiction because this state is a more
128 appropriate forum; or

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

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

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

136 (iii) the court in this state concludes that it is an appropriate forum
137 under the factors set forth in Section 5A-206;

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

142 (4) the requirements for special jurisdiction under Section 5A-204 are met.

143 Section 5A-204. [Special Jurisdiction.]

144 (a) A court of this state lacking jurisdiction under Section 5A-203, (1) through (3), has
145 special jurisdiction to do any of the following:

146 (1) appoint a guardian in an emergency for a respondent who is physically present
147 in this state for a term not exceeding 90 days except that upon a finding of extraordinary
148 circumstances set forth in its order, the court may order an appointment for a longer period to a
149 date certain. The court may for good cause shown extend the appointment for additional 90 day
150 periods;

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

153 (3) appoint a guardian or conservator for an incapacitated or protected person for
154 whom a provisional order to transfer the proceeding from another state has been issued under
155 procedures similar to Section 5A-301.

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

160 Section 5A-205. [Exclusive and Continuing Jurisdiction.]

161 Except as otherwise provided in Section 5A-204, a court that has appointed a guardian or
162 issued a protective order consistent with the Uniform Adult Guardianship and Protective
163 Proceedings Jurisdiction Act has exclusive and continuing jurisdiction over the proceeding until
164 it is terminated by the court or the appointment or order expires by its own terms.

165 Section 5A-206. [Appropriate Forum.]

166 (a) A court of this state having jurisdiction under Section 5A-203 to appoint a guardian
167 or issue a protective order may decline to exercise its jurisdiction if it determines at any time that
168 a court of another state is a more appropriate forum.

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

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

175 (1) any expressed preference of the respondent;

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

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

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

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

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

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

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

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

190 Section 5A-207. [Jurisdiction Declined by Reason of Conduct.]

191 (a) If at any time a court of this state determines that it acquired jurisdiction to appoint a
192 guardian or issue a protective order because of unjustifiable conduct, the court may:

193 (1) decline to exercise jurisdiction;

194 (2) exercise jurisdiction for the limited purpose of fashioning an appropriate
195 remedy to ensure the health, safety, and welfare of the respondent or the protection of the
196 respondent's property or prevent a repetition of the unjustifiable conduct, including staying the
197 proceeding until a petition for the appointment of a guardian or issuance of a protective order is
198 filed in a court of another state having jurisdiction; or

199 (3) continue to exercise jurisdiction after considering:

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

202 (B) whether it is a more appropriate forum than the court of any other state
203 under the factors set forth in Subsection (c) of Section 5A-206; and

204 (C) whether the court of any other state would have jurisdiction under
205 factual circumstances in substantial conformity with the jurisdictional standards of Section 5A-
206 203.

207 (b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or
208 issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable
209 conduct, it may assess against that party necessary and reasonable expenses, including attorney's
210 fees, investigative fees, court costs, communication expenses, witness fees and expenses, and
211 travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or
212 a governmental subdivision, agency, or instrumentality of this state unless authorized by law
213 other than the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act .

214 Section 5A-208. [Notice of Proceeding.]

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

221 Section 5A-209. [Proceedings in More than One State.]

222 Except for a petition for the appointment of a guardian in an emergency or issuance of a
223 protective order limited to property located in this state under Paragraph (1) or (2) of Subsection
224 (a) of Section 5A-204, if a petition for the appointment of a guardian or issuance of a protective
225 order is filed in this state and in another state and neither petition has been dismissed or
226 withdrawn, the following rules apply:

227 (1) If the court in this state has jurisdiction under Section 5A-203, it may proceed
228 with the case unless a court in another state acquires jurisdiction under provisions similar to
229 Section 5A-203 before the appointment or issuance of the order.

230 (2) If the court in this state does not have jurisdiction under Section 5A-203,
231 whether at the time the petition is filed or at any time before the appointment or issuance of the
232 order, the court shall stay the proceeding and communicate with the court in the other state. If the
233 court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the
234 court in the other state determines that the court in this state is a more appropriate forum.

235 PART 3

236 TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

237 Section 5A-301. [Transfer of Guardianship or Conservatorship to Another State.]

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

240 (b) Notice of a petition under Subsection (a) of this section must be given to the persons
241 that would be entitled to notice of a petition in this state for the appointment of a guardian or
242 conservator.

243 (c) On the court's own motion or on request of the guardian or conservator, the
244 incapacitated or protected person, or other person required to be notified of the petition, the court
245 shall hold a hearing on a petition filed pursuant to Subsection (a) of this section.

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

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

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

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

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

261 (1) the protected person is physically present in or is reasonably expected to move
262 permanently to the other state, or the protected person has a significant connection to the other
263 state considering the factors in Subsection (b) of Section 5A-201;

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

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

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

271 (1) a provisional order accepting the proceeding from the court to which the
272 proceeding is to be transferred which is issued under provisions similar to Section 5A-302; and

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

275 Section 5A-302. [Accepting Guardianship or Conservatorship Transferred from Another
276 State.]

277 (a) To confirm transfer of a guardianship or conservatorship transferred to this state under
278 provisions similar to Section 5A-301, the guardian or conservator must petition the court in this
279 state to accept the guardianship or conservatorship. The petition must include a certified copy of
280 the other state's provisional order of transfer.

281 (b) Notice of a petition under Subsection (a) of this section must be given to those
282 persons that would be entitled to notice if the petition were a petition for the appointment of a
283 guardian or issuance of a protective order in both the transferring state and this state. The notice
284 must be given in the same manner as notice is required to be given in this state.

285 (c) On the court's own motion or on request of the guardian or conservator, the
286 incapacitated or protected person, or other person required to be notified of the proceeding, the
287 court shall hold a hearing on a petition filed pursuant to Subsection (a) of this section.

288 (d) The court shall issue an order provisionally granting a petition filed under Subsection
289 (a) of this section unless:

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

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

293 (e) The court shall issue a final order accepting the proceeding and appointing the
294 guardian or conservator as guardian or conservator in this state upon its receipt from the court
295 from which the proceeding is being transferred of a final order issued under provisions similar to
296 Section 5A-301 transferring the proceeding to this state.

297 (f) Not later than 90 days after issuance of a final order accepting transfer of a
298 guardianship or conservatorship, unless otherwise ordered, the court shall determine whether the
299 guardianship or conservatorship needs to be modified to conform to the law of this state.

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

303 (h) The denial by a court of this state of a petition to accept a guardianship or
304 conservatorship transferred from another state does not affect the ability of the guardian or
305 conservator to seek appointment as guardian or conservator in this state under Article V, Parts 3
306 and 4.

307 PART 4

308 REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

309 Section 5A-401. [Registration of Guardianship Orders.]

310 If a guardian has been appointed in another state and a petition for the appointment of a
311 guardian is not pending in this state, the guardian appointed in the other state, after giving notice
312 to the appointing court of an intent to register, may register the guardianship order in this state by
313 filing as a foreign judgment, in any appropriate division of the probate and family court where an
314 original proceeding could be filed, certified copies of the order and letters of office and of any
315 bond.

316 Section 5A-402. [Registration of Protective Orders.]

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

323 Section 5A-403. [Effect of Registration.]

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

329 (b) A court of this state may grant any relief available under the Uniform Adult
330 Guardianship and Protective Proceedings Jurisdiction Act and other law of this state to enforce a
331 registered order.

332 PART 5

333 MISCELLANEOUS PROVISIONS

334 Section 5A-501. [Uniformity of Application and Construction.]

335 In applying and construing the Uniform Adult Guardianship and Protective Proceedings
336 Jurisdiction Act, consideration must be given to the need to promote uniformity of the law with
337 respect to its subject matter among states that enact it.

338 Section 5A-502. [Relation to Electronic Signatures in Global and National Commerce
339 Act.]

340 The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act modifies,
341 limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act,
342 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that
343 act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in
344 Section 103(b) of that act, 15 U.S.C. Section 7003(b).

345 Section 5A-503. [Transitional Provision.]

346 (a) The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act applies
347 to guardianship and protective proceedings begun on or after January 1, 2015.

348 (b) Parts 1, 3 and 4 and Section 5A-501 and Section 5A-502 apply to proceedings begun
349 before January 1, 2015 regardless of whether a guardianship of protective order has been issued.

350 SECTION 2. This act takes effect January 1, 2015.

351 SECTION 3. Section 1-301 of G. L. c. 190B is amended by striking the comma after
352 decedents is line 3 and inserting "and," after decedents in line 3.

353 SECTION 4. Section 1-301 of G. L. c. 190B is further amended by striking ", and
354 persons to be protected," in lines 3 and 4.

355 SECTION 5. Section 1-301 of G. L. c. 190B is further amended by inserting ", protected
356 persons" after persons in line 7.

357 SECTION 6. Section 1-302 of G. L. c. 190B is amended by inserting the following
358 sentence at the end of paragraph (c):

359 "Part 2 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
360 provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a
361 protective order for an adult."

362 SECTION 7. Section 4-201 of G. L. c. 190B is amended by striking paragraphs (d) and
363 (e) in their entirety.

364 SECTION 8. Section 4-202 of G. L. c. 190B is amended by striking "or local guardian or
365 conservator" in lines 5 and 6.

366 SECTION 9. Section 4-203 of G. L. c. 190B is amended by striking "or nonresident
367 protected person" in line 3 and lines 4-5.

368 SECTION 10. Section 4-203 of G. L. c. 190B is further amended by striking "or
369 belonging to the nonresident protected person" in lines 6-7.

370 SECTION 11. Section 4-203 of G. L. c. 190B is further amended by striking “, guardian
371 or conservator” lines 8-9.

372 SECTION 12. Section 4-206 of G. L. c. 190B is amended by striking the second
373 paragraph in its entirety.

374 SECTION 13. Section 5-101 of G. L. c. 190B is amended by striking “and 5-408” in line
375 80 and replacing it with “, 5-408 and Article 5A”.

376 SECTION 14. Section 5-105 of G. L. c. 190B is amended by inserting “or is present”
377 after resides in line 11.

378 SECTION 15. Section 5-431 of G. L. c. 190B is amended by inserting “for a minor” after
379 conservator in lines 3 and 5.

380 SECTION 16. Section 5-431 of G. L. c. 190B is further amended by striking “protected
381 person” and replacing it with “minor” in lines 5 and 7.

382 SECTION 17. Section 5-431 of G. L. c. 190B is further amended by striking “ward,
383 incapacitated or protected person” and replacing it with “minor” in line 13.