

SENATE No. 2249

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Fourteen
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SENATE, Tuesday, July 8, 2014

The committee on Ways and Means, to whom was referred the Senate Bill relative to uniform adult guardianship and protective proceedings jurisdiction (Senate, No. 2165), reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2249).

For the committee,
Stephen M. Brewer

SENATE No. 2249

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:

1 SECTION 1. Section 1-301 of chapter 190B of the General Laws, as appearing in the
2 2012 Official Edition, is hereby amended by striking out, in line 3, the word “decedents,” and
3 inserting in place thereof the following words:- decedents and.

4 SECTION 2. Said section 1-301 of said chapter 190B, as so appearing, is hereby further
5 amended by striking out, in lines 3 and 4, the words “, and persons to be protected.”.

6 SECTION 3. Said section 1-301 of said chapter 190B, as so appearing, is hereby further
7 amended by inserting after the word “persons”, in line 7, the following words:-, protected
8 persons.

9 SECTION 4. Subsection (c) of section 1-302 of said chapter 190B, as so appearing, is
10 hereby amended by adding the following sentence:- Part 2 of Article 5A provides the exclusive
11 jurisdictional basis for a court of the commonwealth to appoint a guardian or issue a protective
12 order for an adult.

13 SECTION 5. Section 4-201 of said chapter 190B, as so appearing, is hereby amended by
14 striking out subsections (d) and (e).

15 SECTION 6. Section 4-202 of said chapter 190B, as so appearing, is hereby amended by
16 striking out, in lines 5 and 6, the words “or local guardian or conservator”.

17 SECTION 7. Section 4-203 of said chapter 190B, as so appearing, is hereby amended by
18 striking out, in lines 3 and 4 and 5, the words “or nonresident protected person”, each time it
19 appears.

20 SECTION 8. Said section 4-203 of said chapter 190B, as so appearing, is hereby further
21 amended by striking out, in lines 6 and 7, the words “or belonging to the nonresident protected
22 person”.

23 SECTION 9. Said section 4-203 of said chapter 190B, as so appearing, is hereby further
24 amended by striking out, in lines 8 and 9, the words “, guardian or conservator”.

25 SECTION 10. Section 4-206 of said chapter 190B, as so appearing, is hereby amended
26 by striking out the second paragraph.

27 SECTION 11. The definition of “Protected person” in section 5-101 of said chapter
28 190B, as so appearing, is hereby amended by striking out, in line 80, the words “and 5-408” and
29 inserting in place thereof the following words:- , 5-408 and Article 5A.

30 SECTION 12. Section 5-105 of said chapter 190B, as so appearing, is hereby amended
31 by inserting after the word “resides”, in line 11, the following words:- or is present.

32 SECTION 13. Section 5-431 of said chapter 190B, as so appearing, is hereby amended
33 by inserting after the word “conservator”, in lines 3 and 5, the words “for a minor”, in each
34 instance.

35 SECTION 14. Said section 5-431 of said chapter 190B, as so appearing, is hereby further
36 amended by striking out, in lines 5 and 7, the words “protected person” and inserting in place
37 thereof, in each instance, the following word:- minor.

38 SECTION 15. Said section 5-431 of said chapter 190B, as so appearing, is hereby further
39 amended by striking out, in line 13, the words “ward, incapacitated or protected person” and
40 inserting in place thereof the following word:- minor.

41 SECTION 16. Chapter 190B of the General Laws is hereby further amended by inserting
42 after Article V the following Article:-

43 ARTICLE 5A

44 UNIFORM ADULT GUARDIANSHIP AND

45 PROTECTIVE PROCEEDINGS JURISDICTION ACT

46 PART 1

47 GENERAL PROVISIONS

48 Section 5A-101. [Short Title.]

49 Article 5A shall be known and may be cited as the Uniform Adult Guardianship and
50 Protective Proceedings Jurisdiction Act.

51 Section 5A-102. [Definitions.]

52 As used in this Article, the following terms shall have the following meanings unless the
53 context clearly requires otherwise:

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

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

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

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

60 (5) “Guardianship proceeding”, a judicial proceeding seeking or issuing the
61 appointment of a guardian.

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

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

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

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

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

72 (11) “Protective proceeding”, a judicial proceeding seeking or issuing a protective
73 order.

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

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

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

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

83 A court of the commonwealth may treat a foreign country as if it were a state for the
84 purpose of applying Parts 1, 2, 3 and 5 of the uniform adult guardianship and protective
85 proceedings jurisdiction act.

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

87 (a) A court of the commonwealth may communicate with a court in another state
88 concerning a proceeding arising under the Uniform Adult Guardianship and Protective
89 Proceedings Jurisdiction Act. The court may allow the parties to participate in the

90 communication. Except as otherwise provided in subsection (b), the court shall make a record of
91 the communication. The record may be limited to the fact that the communication occurred.

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

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

95 (a) In a guardianship or protective proceeding in the commonwealth, a court of the
96 commonwealth may request the appropriate court of another state to do any of the following:

97 (1) hold an evidentiary hearing;

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

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

101 (4) order an appropriate investigation of a person involved in a proceeding;

102 (5) forward to the court of the commonwealth a certified copy of the transcript or
103 other record of a hearing under paragraph (1) or another proceeding, the evidence otherwise
104 produced under paragraph (2) and the evaluation or assessment prepared in compliance with an
105 order under paragraph (3) or (4);

106 (6) issue an order necessary to assure the appearance in the proceeding of a person
107 whose presence is necessary for the court to make a determination, including the respondent or
108 the incapacitated or protected person;

109 (7) issue an order authorizing the release of medical, financial, criminal or other
110 relevant information in that state, including protected health information as defined in 45 C.F.R.
111 160.103, as amended.

112 (b) If a court of another state in which a guardianship or protective proceeding is pending
113 requests assistance of the kind provided in subsection (a), a court of the commonwealth has
114 jurisdiction for the limited purpose of granting the request or making reasonable efforts to
115 comply with the request.

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

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

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

126 (c) Documentary evidence transmitted from another state to a court of the commonwealth
127 by technological means that do not produce an original writing shall not be excluded from
128 evidence on an objection based on the best evidence rule.

129 PART 2

130

JURISDICTION

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

132 (a) As used in this part, the following terms shall have the following meaning unless the
133 context clearly requires otherwise:

134 (1) “Emergency”, a circumstance that will likely result in substantial harm to a
135 respondent’s health, safety or welfare and for which the appointment of a guardian is necessary
136 because no other person has authority and is willing to act on the respondent’s behalf.

137 (2) “Home state”, the state in which the respondent was physically present,
138 including any period of temporary absence, for at least 6 consecutive months immediately before
139 the filing of a petition for a protective order or the appointment of a guardian; provided,
140 however, that if there is no such state then the state in which the respondent was physically
141 present, including any period of temporary absence, for at least 6 consecutive months ending
142 within the 6 months prior to the filing of the petition.

143 (3) “Significant-connection state”, a state, other than the home state, with which a
144 respondent has a significant connection other than mere physical presence and in which
145 substantial evidence concerning the respondent is available.

146 (b) In determining under section 5A-203 and subsection (e) of section 5A-301 if a
147 respondent has a significant connection with a particular state, the court shall consider:

148 (1) the location of the respondent’s family and other persons required to be
149 notified of the guardianship or protective proceeding;

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

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

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

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

157 This part provides the exclusive jurisdictional basis for a court of the commonwealth to
158 appoint a guardian or issue a protective order for an adult.

159 Section 5A-203. [Jurisdiction.]

160 A court of the commonwealth has jurisdiction to appoint a guardian or issue a protective
161 order for a respondent if:

162 (1) the commonwealth is the respondent's home state;

163 (2) on the date the petition is filed, the commonwealth is a significant-connection
164 state and:

165 (A) the respondent does not have a home state or a court of the
166 respondent's home state has declined to exercise jurisdiction because the commonwealth is a
167 more appropriate forum; or

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

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

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

175 (iii) the court in this state concludes that it is an appropriate forum
176 under the factors in section 5A-206;

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

181 or

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

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

184 (a) A court of the commonwealth lacking jurisdiction under paragraphs (1) to (3),
185 inclusive, of section 5A-203 has special jurisdiction to:

186 (1) appoint a guardian in an emergency for a respondent who is physically present
187 in the commonwealth for a term not exceeding 90 days; provided, however, that upon a finding
188 of extraordinary circumstances set forth in its order, the court may order an appointment for a

189 longer period to a date certain; and provided further, that the court may for good cause shown
190 extend the appointment for additional 90 day periods;

191 (2) issue a protective order with respect to real or tangible personal property
192 located in the commonwealth;

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

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

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

201 Except as otherwise provided in section 5A-204, a court that has appointed a guardian or
202 issued a protective order consistent with this Article shall have exclusive and continuing
203 jurisdiction over the proceeding until it is terminated by the court or the appointment or order
204 expires by its own terms.

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

206 (a) A court of the commonwealth that has jurisdiction under section 5A-203 to appoint a
207 guardian or issue a protective order may decline to exercise its jurisdiction if the court
208 determines, at any time, that a court of another state is a more appropriate forum.

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

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

215 (1) any expressed preference of the respondent;

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

219 (3) the length of time the respondent was physically present in or was a legal
220 resident of the commonwealth or another state;

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

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

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

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

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

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

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

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

233 (1) decline to exercise jurisdiction;

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

239 (3) continue to exercise jurisdiction after considering:

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

242 (B) whether it is a more appropriate forum than the court of another state
243 under the factors in subsection (c) of section 5A-206; and

244 (C) whether the court of another state would have jurisdiction under
245 factual circumstances in substantial conformity with the jurisdictional standards of section 5A-
246 203.

247 (b) If a court of the commonwealth determines that it acquired jurisdiction to appoint a
248 guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in
249 unjustifiable conduct, it may assess against that party necessary and reasonable expenses,
250 including attorney's fees, investigative fees, court costs, communication expenses, witness fees
251 and expenses and travel expenses. The court may not assess fees, costs or expenses of any kind
252 against the commonwealth or a governmental subdivision, agency or instrumentality of the
253 commonwealth unless authorized by law .

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

255 If a petition for the appointment of a guardian or issuance of a protective order is brought
256 in the commonwealth and the commonwealth was not the respondent's home state on the date
257 the petition was filed, in addition to complying with the notice requirements of the
258 commonwealth, notice of the petition shall be given to those persons who are entitled to notice of
259 the petition if a proceeding were brought in the respondent's home state. The notice shall be
260 given in the same manner as notice is required to be given in the commonwealth.

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

262 Except for a petition for the appointment of a guardian in an emergency or issuance of a
263 protective order limited to property located in the commonwealth under paragraph (1) or (2) of
264 subsection (a) of section 5A-204, if a petition for the appointment of a guardian or issuance of a
265 protective order is filed in the commonwealth and in another state and neither petition has been
266 dismissed or withdrawn, the following rules apply:

267 (1) If the court in the commonwealth has jurisdiction under section 5A-203, it
268 may proceed with the case unless a court in another state acquires jurisdiction under provisions
269 similar to section 5A-203 before the appointment or issuance of the order.

270 (2) If the court in the commonwealth does not have jurisdiction under section 5A-
271 203, whether at the time the petition is filed or at any time before the appointment or issuance of
272 the order, the court shall stay the proceeding and communicate with the court in the other state. If
273 the court in the other state has jurisdiction, the court in the commonwealth shall dismiss the
274 petition unless the court in the other state determines that the court in the commonwealth is a
275 more appropriate forum.

276 PART 3

277 TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

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

279 (a) A guardian or conservator appointed in the commonwealth may petition the court to
280 transfer the guardianship or conservatorship to another state.

281 (b) Notice of a petition under subsection (a) shall be given to the persons entitled to
282 notice of a petition in the commonwealth for the appointment of a guardian or conservator.

283 (c) On the court's own motion or at the request of the guardian or conservator, the
284 incapacitated or protected person or another person required to be notified of the petition, the
285 court shall hold a hearing on a petition filed pursuant to subsection (a).

286 (d) The court shall issue an order provisionally granting a petition to transfer a
287 guardianship and shall direct the guardian to petition for guardianship in the other state if the

288 court is satisfied that the guardianship will be accepted by the court in the other state and the
289 court finds that:

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

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

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

297 (e) The court shall issue a provisional order granting a petition to transfer a
298 conservatorship and shall direct the conservator to petition for conservatorship in the other state
299 if the court is satisfied that the court of the other state will accept the conservatorship and the
300 court finds that:

301 (1) the protected person is physically present in or is reasonably expected to move
302 permanently to the other state, or the protected person has a significant connection to the other
303 state considering the factors in subsection (b) of section 5A-201;

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

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

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

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

313 (2) the documents required to terminate a guardianship or conservatorship in the
314 commonwealth.

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

317 (a) To confirm the transfer of a guardianship or conservatorship to the commonwealth
318 under provisions similar to section 5A-301, the guardian or conservator shall petition the court in
319 the commonwealth to accept the guardianship or conservatorship. The petition shall include a
320 certified copy of the other state's provisional order of transfer.

321 (b) Notice of a petition under subsection (a) shall be given to those persons entitled to
322 notice of the petition were a petition for the appointment of a guardian or issuance of a protective
323 order in both the transferring state and the commonwealth. The notice shall be given in the same
324 manner as notice is required to be given in the commonwealth.

325 (c) On the court's own motion or at the request of the guardian or conservator, the
326 incapacitated or protected person or other person required to be notified of the proceeding, the
327 court shall hold a hearing on a petition filed pursuant to subsection (a).

328 (d) The court shall issue an order provisionally granting a petition filed under subsection
329 (a) unless:

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

332 (2) the guardian or conservator is ineligible for appointment in the
333 commonwealth.

334 (e) The court shall issue a final order accepting the proceeding and appointing the
335 guardian or conservator as guardian or conservator in the commonwealth upon the court's receipt
336 from the court from which the proceeding is being transferred of a final order issued under
337 provisions similar to section 5A-301 transferring the proceeding to the commonwealth.

338 (f) Not later than 90 days after the issuance of a final order accepting the transfer of a
339 guardianship or conservatorship, unless otherwise ordered, the court shall determine whether the
340 guardianship or conservatorship needs to be modified to conform to the laws of the
341 commonwealth.

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

345 (h) The denial by a court of the commonwealth of a petition to accept a guardianship or
346 conservatorship transferred from another state does not affect the ability of the guardian or
347 conservator to seek appointment as guardian or conservator in the commonwealth under Parts 3
348 and 4 of Article V.

349 PART 4

350 REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

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

352 If a guardian has been appointed in another state and a petition for the appointment of a
353 guardian is not pending in the commonwealth, the guardian appointed in the other state, after
354 giving notice to the appointing court of an intent to register, may register the guardianship order
355 in the commonwealth by filing, as a foreign judgment, in an appropriate division of the probate
356 and family court where an original proceeding could be filed, certified copies of the order and
357 letters of office and of any bond.

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

359 If a conservator has been appointed in another state and a petition for a protective order is
360 not pending in the commonwealth, the conservator appointed in the other state, after giving
361 notice to the appointing court of an intent to register, may register the protective order in the
362 commonwealth by filing, as a foreign judgment in a court of the commonwealth, in a division of
363 the probate and family court in which property belonging to the protected person is located,
364 certified copies of the order and letters of office and of any bond.

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

366 (a) Upon registration of a guardianship or protective order from another state, the
367 guardian or conservator may exercise in the commonwealth all powers authorized in the order of
368 appointment except those powers prohibited under the laws of the commonwealth, including
369 maintaining actions and proceedings in the commonwealth and, if the guardian or conservator is
370 not a resident of the commonwealth, subject to any conditions imposed upon nonresident parties.

371 (b) A court of the commonwealth may grant relief available under this Article and other
372 laws of of the commonwealth to enforce a registered order.

373 PART 5

374 MISCELLANEOUS PROVISIONS

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

376 In applying and construing this Article, consideration shall be given to the need to
377 promote uniformity of the law with respect to its subject matter among states that enact it.

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

380 This Article modifies, limits and supersedes the federal Electronic Signatures in Global
381 and National Commerce Act, 15 U.S.C. 7001, et seq., but shall not modify, limit or supersede
382 section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of
383 the notices described in section 103(b) of that act, 15 U.S.C. Section 7003(b).

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

385 (a) This Article shall apply to guardianship and protective proceedings begun on or after
386 January 1, 2015.

387 (b) Parts 1, 3 and 4 and section 5A-501 and section 5A-502 shall apply to proceedings
388 begun before January 1, 2015 regardless of whether a guardianship or protective order has been
389 issued.

390 SECTION 17. This act shall take effect on January 1, 2015.