HOUSE DOCKET, NO. 1985 FILED ON: 1/17/2013

HOUSE . . . . . No. 1366

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 relative to uniform adult guardianship and protective proceedings jurisdiction.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Anne M. Gobi	*5th Worcester*
James J. Dwyer	*30th Middlesex*
Kimberly N. Ferguson	*1st Worcester*
Robert L. Hedlund	*Plymouth and Norfolk*
Bruce J. Ayers	*1st Norfolk*
Cory Atkins	*14th Middlesex*
Katherine M. Clark	*Fifth Middlesex*
Paul McMurtry	*11th Norfolk*

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HOUSE . . . . . No. 1366

By Ms. Gobi of Spencer, a petition (accompanied by bill, House, No. 1366) of Anne M. Gobi and others relative to uniform adult guardianship. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *2181* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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. DEFINITIONS.

(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, which may include a person appointed under a person appointed under the state's conservatorship or protective proceedings statutes.

(3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, which may include a person appointed under a person appointed under the state's conservatorship or protective proceedings statutes.

(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.

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

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

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

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

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

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

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

31 SECTION 2. INTERNATIONAL APPLICATION OF ACT. A court of this state may
32 treat a foreign country as if it were a state for the purpose of applying this law

33 SECTION 3. COMMUNICATION BETWEEN COURTS.

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

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

40 SECTION 4. COOPERATION BETWEEN COURTS.

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

43 (1) hold an evidentiary hearing;

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

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

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

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

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

55 (7) issue an order authorizing the release of medical, financial, criminal, or other
56 relevant information in that state, including protected health information as defined in 45 C.F.R.
57 Section 164.504, as amended.

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

62 SECTION 5. TAKING TESTIMONY IN ANOTHER STATE.

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

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

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

75 (d). A state that has adequate exceptions to its best evidence rule to permit the
76 introduction of evidence transmitted by facsimile or in electronic form should delete subsection
77 (c).

78 JURISDICTION

79 SECTION 6. DEFINITIONS; SIGNIFICANT CONNECTION FACTORS.

80 (a) In this act:

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

84 (2) "Home state" means the state in which the respondent was physically present,
85 including any period of temporary absence, for at least six consecutive months immediately
86 before the filing of a petition for a protective order or the appointment of a guardian; or if none,
87 the state in which the respondent was physically present, including any period of temporary
88 absence, for at least six consecutive months ending within the six months prior to the filing of the
89 petition.

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

93 (b) In determining under Sections 3 and Section (e) whether a respondent has a
94 significant connection with a particular state, the court shall consider:

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

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

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

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

103 SECTION 7. EXCLUSIVE BASIS. This act provides the exclusive jurisdictional basis
104 for a court of this state to appoint a guardian or issue a protective order for an adult.

105 SECTION 8. JURISDICTION. A court of this state has jurisdiction to appoint a
106 guardian or issue a protective order for a respondent if:

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

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

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

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

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

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

117 (iii) the court in this state concludes that it is an appropriate forum under the factors set
118 forth in Section 206;

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

123 (4) the requirements for special jurisdiction under Section 4 are met.

124 SECTION 9. SPECIAL JURISDICTION.

125 (a) A court of this state lacking jurisdiction under Section 3 has special jurisdiction to do
126 any of the following:

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

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

131 (3) appoint a guardian or conservator for an incapacitated or protected person for whom
132 a provisional order to transfer the proceeding from another state has been issued under
133 procedures similar to Section 301.

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

138 SECTION 10. EXCLUSIVE AND CONTINUING JURISDICTION. Except as
139 otherwise provided in Section 9, a court that has appointed a guardian or issued a protective
140 order consistent with this act has exclusive and continuing jurisdiction over the proceeding until
141 it is terminated by the court or the appointment or order expires by its own terms.

142 SECTION 11. APPROPRIATE FORUM.

143 (a) A court of this state having jurisdiction under Section 3 to appoint a guardian or issue
144 a protective order may decline to exercise its jurisdiction if it determines at any time that a court
145 of another state is a more appropriate forum.

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

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

152 (1) any expressed preference of the respondent;

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

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

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

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

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

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

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

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

166 SECTION 12. JURISDICTION DECLINED BY REASON OF CONDUCT.

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

169 (1) decline to exercise jurisdiction;

170 (2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to
171 ensure the health, safety, and welfare of the respondent or the protection of the respondent's
172 property or prevent a repetition of the unjustifiable conduct, including staying the proceeding

173 until a petition for the appointment of a guardian or issuance of a protective order is filed in a
174 court of another state having jurisdiction; or

175 (3) continue to exercise jurisdiction after considering:

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

178 (B) whether it is a more appropriate forum than the court of any other state under the
179 factors set forth in Section 6 (c); and

180 (C) whether the court of any other state would have jurisdiction under factual
181 circumstances in substantial conformity with the jurisdictional standards of Section 9.

182 (b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or
183 issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable
184 conduct, it may assess against that party necessary and reasonable expenses, including attorney's
185 fees, investigative fees, court costs, communication expenses, witness fees and expenses, and
186 travel expenses. The court may not assess fees, costs, or expenses of any kind against this state
187 or a governmental subdivision, agency, or instrumentality of this state unless authorized by law
188 other than this act.

189 SECTION 13. NOTICE OF PROCEEDING. If a petition for the appointment of a
190 guardian or issuance of a protective order is brought in this state and this state was not the
191 respondent's home state on the date the petition was filed, in addition to complying with the
192 notice requirements of this state, notice of the petition must be given to those persons who would
193 be entitled to notice of the petition if a proceeding were brought in the respondent's home state.
194 The notice must be given in the same manner as notice is required to be given in this state.

195 SECTION 14. PROCEEDINGS IN MORE THAN ONE STATE. Except for a petition
196 for the appointment of a guardian in an emergency or issuance of a protective order limited to
197 property located in this state under Section 4 (a)(1) or (a)(2), if a petition for the appointment of
198 a guardian or issuance of a protective order is filed in this state and in another state and neither
199 petition has been dismissed or withdrawn, the following rules apply:

200 (1) If the court in this state has jurisdiction under Section 3, it may proceed with the case
201 unless a court in another state acquires jurisdiction under provisions similar to Section 3 before
202 the appointment or issuance of the order.

203 (2) If the court in this state does not have jurisdiction under Section 3, whether at the

204 time the petition is filed or at any time before the appointment or issuance of the order,
205 the court

206 shall stay the proceeding and communicate with the court in the other state. If the court
207 in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court
208 in the other state determines that the court in this state is a more appropriate forum.

209 TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

210 SECTION 15. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO
211 ANOTHER STATE.

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

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

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

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

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

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

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

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

234 (1) the protected person is physically present in or is reasonably expected to move
235 permanently to the other state, or the protected person has a significant connection to the other
236 state considering the factors in Section 1(b);

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

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

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

244 (1) a provisional order accepting the proceeding from the court to which the proceeding is
245 to be transferred which is issued under provisions similar to Section 17; and

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

247

248 SECTION 16. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP
249 TRANSFERRED FROM ANOTHER STATE.

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

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

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

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

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

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

266 (e) The court shall issue a final order accepting the proceeding and appointing the
267 guardian or conservator as guardian or conservator in this state upon its receipt from the court

268 from which the proceeding is being transferred of a final order issued under provisions similar to
269 Section 16 transferring the proceeding to this state.

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

273 (g) In granting a petition under this section, the court shall recognize a guardianship or
274 conservatorship order from the other state, including the determination of the incapacitated or
275 protected person's incapacity and the appointment of the guardian or 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 or
278 conservator to seek appointment as guardian or conservator in this state if the court has
279 jurisdiction to make an appointment other than by reason of the provisional order of transfer.

280 REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

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

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

293 SECTION 19. EFFECT OF REGISTRATION.

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

299 (b) A court of this state may grant any relief available under this act and other law of this
300 state to enforce a registered order.

301 MISCELLANEOUS PROVISIONS

302 SECTION 20. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In
303 applying and construing this uniform act, consideration must be given to the need to promote
304 uniformity of the law with respect to its subject matter among states that enact it.

305 SECTION 21. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL

306 AND NATIONAL COMMERCE ACT. This act modifies, limits, and supersedes the
307 federal

308 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et
309 seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section
310 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that
311 act, 15U.S.C. Section 7003(b).

312 SECTION 22. TRANSITIONAL PROVISION.

313 (a) This act applies to guardianship and protective proceedings begun on or after the
314 effective date.