

IN THE SENATE

SENATE BILL NO. 1056

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT; AMENDING TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 13, TITLE 15, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR INTERNATIONAL APPLICATION OF THE CHAPTER, TO PROVIDE FOR COMMUNICATIONS BETWEEN COURTS, TO PROVIDE FOR COOPERATION BETWEEN COURTS, TO PROVIDE FOR TAKING TESTIMONY IN ANOTHER STATE, TO DEFINE TERMS, TO PROVIDE FOR SIGNIFICANT-CONNECTION FACTORS REGARDING JURISDICTION, TO PROVIDE FOR EXCLUSIVE JURISDICTIONAL BASIS, TO PROVIDE FOR JURISDICTION, TO PROVIDE FOR SPECIAL JURISDICTION, TO PROVIDE FOR EXCLUSIVE AND CONTINUING JURISDICTION, TO PROVIDE FOR AN APPROPRIATE FORUM, TO PROVIDE FOR JURISDICTION DECLINED BY REASON OF CONDUCT, TO PROVIDE FOR NOTICE OF PROCEEDING, TO PROVIDE FOR PROCEEDINGS IN MORE THAN ONE STATE, TO PROVIDE FOR TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE, TO PROVIDE FOR ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE, TO PROVIDE FOR THE REGISTRATION OF GUARDIANSHIP ORDERS, TO PROVIDE FOR THE REGISTRATION OF PROTECTIVE ORDERS, TO PROVIDE FOR THE EFFECT OF REGISTRATION, TO PROVIDE FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION OF THE ACT, TO PROVIDE FOR THE RELATION TO THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT AND TO PROVIDE TRANSITIONAL PROVISIONS; AND REPEALING CHAPTERS 9, 10 AND 11, TITLE 15, IDAHO CODE, REGARDING FOREIGN GUARDIANSHIPS AND CONSERVATORSHIPS, TRANSFERS OF GUARDIANSHIPS AND CONSERVATORSHIPS TO A FOREIGN JURISDICTION AND TEMPORARY RECOGNITION OF FOREIGN GUARDIANSHIPS AND CONSERVATORSHIPS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 13, Title 15, Idaho Code, and to read as follows:

CHAPTER 13

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

PART 1

GENERAL PROVISIONS

15-13-101. SHORT TITLE. This chapter may be cited as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act."

15-13-102. DEFINITIONS. In this chapter:

(1) "Adult" means an individual who has attained eighteen (18) years of age.

1 (2) "Conservator" means a person appointed by the court to administer
2 the property of an adult, including a person appointed pursuant to chapter 5,
3 title 15, Idaho Code.

4 (3) "Guardian" means a person appointed by the court to make decisions
5 regarding the person of an adult, including a person appointed pursuant to
6 chapter 5, title 15, Idaho Code.

7 (4) "Guardianship order" means an order appointing a guardian.

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

10 (6) "Incapacitated person" means an adult for whom a guardian has been
11 appointed.

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

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

20 (9) "Protected person" means an adult for whom a protective order has
21 been issued.

22 (10) "Protective order" means an order appointing a conservator or
23 other order related to management of an adult's property.

24 (11) "Protective proceeding" means a judicial proceeding in which a
25 protective order is sought or has been issued.

26 (12) "Record" means information that is inscribed on a tangible medium
27 or that is stored in an electronic or other medium and is retrievable in per-
28 ceivable form.

29 (13) "Respondent" means an adult for whom a protective order or the ap-
30 pointment of a guardian is sought.

31 (14) "State" means a state of the United States, the District of Colum-
32 bia, Puerto Rico, the United States Virgin Islands, a federally recognized
33 Indian tribe or any territory or insular possession subject to the jurisdic-
34 tion of the United States.

35 15-13-103. INTERNATIONAL APPLICATION OF CHAPTER. A court of this
36 state may treat a foreign country as if it were a state for the purpose of
37 applying part 1 of this chapter and parts 2, 3 and 5 of this chapter.

38 15-13-104. COMMUNICATIONS BETWEEN COURTS. (1) A court of this state
39 may communicate with a court in another state concerning a proceeding aris-
40 ing pursuant to this chapter. The court may allow the parties to participate
41 in the communication. Except as otherwise provided in subsection (2) of this
42 section, the court shall make a record of the communication. The record may
43 be limited to the fact that the communication occurred.

44 (2) Courts may communicate concerning schedules, calendars, court
45 records and other administrative matters without making a record.

1 15-13-105. COOPERATION BETWEEN COURTS. (1) In a guardianship or pro-
 2 tective proceeding in this state, a court of this state may request the ap-
 3 propriate court of another state to do any of the following:

4 (a) Hold an evidentiary hearing;

5 (b) Order a person in that state to produce evidence or give testimony
 6 pursuant to procedures of that state;

7 (c) Order that an evaluation or assessment be made of the respondent;

8 (d) Order any appropriate investigation of a person involved in a pro-
 9 ceeding;

10 (e) Forward to the court of this state a certified copy of the tran-
 11 script or other record of a hearing pursuant to paragraph (a) of this
 12 subsection or any other proceeding, any evidence otherwise produced
 13 pursuant to paragraph (b) of this subsection, and any evaluation or as-
 14 sessment prepared in compliance with an order pursuant to paragraph (c)
 15 or (d) of this subsection;

16 (f) Issue any order necessary to assure the appearance in the pro-
 17 ceeding of a person whose presence is necessary for the court to make a
 18 determination, including the respondent or the incapacitated or pro-
 19 tected person;

20 (g) Issue an order authorizing the release of medical, financial, crim-
 21 inal, or other relevant information in that state, including protected
 22 health information as defined in 45 CFR 160.103, as amended.

23 (2) If a court of another state in which a guardianship or protective
 24 proceeding is pending requests assistance of the kind provided in subsection
 25 (1) of this section, a court of this state has jurisdiction for the limited
 26 purpose of granting the request or making reasonable efforts to comply with
 27 the request.

28 15-13-106. TAKING TESTIMONY IN ANOTHER STATE. (1) In a guardianship or
 29 protective proceeding, in addition to other procedures that may be avail-
 30 able, testimony of a witness who is located in another state may be offered
 31 by deposition or other means allowable in this state for testimony taken in
 32 another state. The court on its own motion may order that the testimony of a
 33 witness be taken in another state and may prescribe the manner in which and
 34 the terms upon which the testimony is to be taken.

35 (2) In a guardianship or protective proceeding, a court in this state
 36 may permit a witness located in another state to be deposed or to testify by
 37 telephone, audio-visual or other electronic means. A court of this state
 38 shall cooperate with the court of the other state in designating an appropri-
 39 ate location for the deposition or testimony.

40 (3) Documentary evidence transmitted from another state to a court of
 41 this state by technological means that do not produce an original writing
 42 may not be excluded from evidence on an objection based on the best evidence
 43 rule.

44 PART 2 45 JURISDICTION

46 15-13-201. DEFINITIONS -- SIGNIFICANT-CONNECTION FACTORS. (1) In
 47 this part:

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

(b) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months ending within the six (6) months prior to the filing of the petition.

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

(2) In determining whether a respondent has a significant connection with a particular state pursuant to sections 15-13-203 and 15-13-301(5), Idaho Code, the court shall consider:

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

(b) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(c) The location of the respondent's property; and

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

15-13-202. EXCLUSIVE BASIS. This part provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

15-13-203. JURISDICTION. A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) This state is the respondent's home state;

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

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

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

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

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

(iii) The court in this state concludes that it is an appropriate forum under the factors set forth in section 15-13-206, Idaho Code;

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

(4) The requirements for special jurisdiction under section 15-13-204, Idaho Code, are met.

15-13-204. SPECIAL JURISDICTION. (1) A court of this state lacking jurisdiction pursuant to section 15-13-203(1) through (3), Idaho Code, has special jurisdiction to do any of the following:

(a) Appoint a guardian in an emergency for a term not exceeding ninety (90) days for a respondent who is physically present in this state;

(b) Issue a protective order with respect to real or tangible personal property located in this state;

(c) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 15-13-301, Idaho Code.

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

15-13-205. EXCLUSIVE AND CONTINUING JURISDICTION. Except as otherwise provided in section 15-13-204, Idaho Code, a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

15-13-206. APPROPRIATE FORUM. (1) A court of this state having jurisdiction pursuant to section 15-13-203, Idaho Code, to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction pursuant to subsection (1) of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

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

(a) Any expressed preference of the respondent;

(b) Whether there is reason to suspect that abuse, neglect or exploitation of the respondent has occurred or is likely to occur and which state

could best protect the respondent from the abuse, neglect or exploitation;

(c) The length of time the respondent was physically present in or was a legal resident of this or another state;

(d) The distance of the respondent from the court in each state;

(e) The financial circumstances of the respondent's estate;

(f) The nature and location of the evidence;

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

(h) The familiarity of the court of each state with the facts and issues in the proceeding; and

(i) If an appointment was made, the court's ability to monitor the conduct of the guardian or conservator.

15-13-207. JURISDICTION DECLINED BY REASON OF CONDUCT. (1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(a) Decline to exercise jurisdiction;

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

(c) Continue to exercise jurisdiction after considering:

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

(ii) Whether it is a more appropriate forum than the court of any other state under the factors set forth in section 15-13-206(c), Idaho Code; and

(iii) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 15-13-203, Idaho Code.

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

15-13-208. NOTICE OF PROCEEDING. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice

1 of the petition if a proceeding was brought in the respondent's home state.
 2 The notice must be given in the same manner as notice is required to be given
 3 in this state.

4 15-13-209. PROCEEDINGS IN MORE THAN ONE STATE. Except for a petition
 5 for the appointment of a guardian in an emergency or issuance of a protec-
 6 tive order limited to property located in this state pursuant to section
 7 15-13-204(1) (a) or (1) (b), Idaho Code, if a petition for the appointment of a
 8 guardian or issuance of a conservatorship or other protective order is filed
 9 in this state and in another state and neither petition has been dismissed or
 10 withdrawn, the following rules apply:

11 (1) If the court in this state has jurisdiction pursuant to section
 12 15-13-203, Idaho Code, it may proceed with the case unless a court in an-
 13 other state acquires jurisdiction pursuant to provisions similar to section
 14 15-13-203, Idaho Code, before the appointment or issuance of the order.

15 (2) If the court in this state does not have jurisdiction pursuant to
 16 section 15-13-203, Idaho Code, whether at the time the petition is filed or
 17 at any time before the appointment or issuance of the order, the court shall
 18 stay the proceeding and communicate with the court in the other state. If
 19 the court in the other state has jurisdiction, the court in this state shall
 20 dismiss the petition unless the court in the other state determines that the
 21 court in this state is a more appropriate forum.

22 PART 3

23 TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE

24 15-13-301. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER
 25 STATE. (1) A guardian or conservator appointed in this state may petition the
 26 court to transfer the guardianship or conservatorship to another state.

27 (2) Notice of a petition pursuant to subsection (1) of this section must
 28 be given to the persons that would be entitled to notice of a petition in this
 29 state for the appointment of a guardian or conservator.

30 (3) On the court's own motion or on request of the guardian or conser-
 31 vator, the incapacitated or protected person, or other person required to be
 32 notified of the petition, the court shall hold a hearing on a petition filed
 33 pursuant to subsection (1) of this section.

34 (4) The court shall issue an order provisionally granting a petition
 35 to transfer a guardianship and shall direct the guardian to petition for
 36 guardianship in the other state if the court is satisfied that the guardian-
 37 ship will be accepted by the court in the other state and the court finds
 38 that:

39 (a) The incapacitated person is physically present in or is reasonably
 40 expected to move permanently to the other state;

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

44 (c) Plans for care and services for the incapacitated person in the
 45 other state are reasonable and sufficient.

46 (5) The court shall issue a provisional order granting a petition to
 47 transfer a conservatorship and shall direct the conservator to petition for
 48 conservatorship in the other state if the court is satisfied that the conser-

1 vatorship will be accepted by the court of the other state and the court finds
2 that:

3 (a) The protected person is physically present in or is reasonably ex-
4 pected to move permanently to the other state, or the protected person
5 has a significant connection to the other state considering the factors
6 in section 15-13-201(b), Idaho Code;

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

10 (c) Adequate arrangements will be made for management of the protected
11 person's property.

12 (6) The court shall issue a final order confirming the transfer and ter-
13 minating the guardianship or conservatorship upon its receipt of:

14 (a) A provisional order accepting the proceeding from the court to
15 which the proceeding is to be transferred that is issued under provi-
16 sions similar to section 15-13-302, Idaho Code; and

17 (b) The documents required to terminate a guardianship or conservator-
18 ship in this state.

19 15-13-302. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED
20 FROM ANOTHER STATE. (1) To confirm transfer of a guardianship or conser-
21 vatorship transferred to this state under provisions similar to section
22 15-13-301, Idaho Code, the guardian or conservator must petition the court
23 in this state to accept the guardianship or conservatorship. The petition
24 must include a certified copy of the other state's provisional order of
25 transfer.

26 (2) Notice of a petition pursuant to subsection (1) of this section must
27 be given to those persons that would be entitled to notice if the petition
28 was a petition for the appointment of a guardian or issuance of a protective
29 order in both the transferring state and this state. The notice must be given
30 in the same manner as notice is required to be given in this state.

31 (3) On the court's own motion or on request of the guardian or conser-
32 vator, the incapacitated or protected person, or other person required to
33 be notified of the proceeding, the court shall hold a hearing on a petition
34 filed pursuant to subsection (1) of this section.

35 (4) The court shall issue an order provisionally granting a petition
36 filed pursuant to subsection (1) of this section unless:

37 (a) An objection is made and the objector establishes that transfer of
38 the proceeding would be contrary to the interests of the incapacitated
39 or protected person; or

40 (b) The guardian or conservator is ineligible for appointment in this
41 state.

42 (5) The court shall issue a final order accepting the proceeding and
43 appointing a guardian or conservator as guardian or conservator in this
44 state upon its receipt, from the court from which the proceeding is being
45 transferred, of a final order issued under provisions similar to section
46 15-13-301, Idaho Code, transferring the proceeding to this state.

47 (6) Not later than ninety (90) days after issuance of a final order ac-
48 cepting transfer of a guardianship or conservatorship, the court shall de-

1 termine whether the guardianship or conservatorship needs to be modified to
2 conform to the law of this state.

3 (7) In granting a petition pursuant to this section, the court shall
4 recognize a guardianship or conservatorship order from the other state, in-
5 cluding the determination of the incapacitated or protected person's inca-
6 pacity and the appointment of a guardian or conservator.

7 (8) The denial by a court of this state of a petition to accept a
8 guardianship or conservatorship transferred from another state does not
9 affect the ability of the guardian or conservator to seek appointment as
10 guardian or conservator in this state pursuant to chapter 5, title 15, Idaho
11 Code, if the court has jurisdiction to make an appointment other than by rea-
12 son of the provisional order of transfer.

13 PART 4

14 REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

15 15-13-401. REGISTRATION OF GUARDIANSHIP ORDERS. If a guardian has
16 been appointed in another state and a petition for the appointment of a
17 guardian is not pending in this state, the guardian appointed in the other
18 state, after giving notice to the appointing court of an intent to register,
19 may register the guardianship order in this state by filing as a foreign
20 judgment in a court, in any appropriate county of this state, certified
21 copies of the order and letters of office.

22 15-13-402. REGISTRATION OF PROTECTIVE ORDERS. If a conservator has
23 been appointed in another state and a petition for a protective order is not
24 pending in this state, the conservator appointed in the other state, after
25 giving notice to the appointing court of an intent to register, may register
26 the protective order in this state by filing as a foreign judgment in a court
27 of this state, in any county in which property belonging to the protected
28 person is located, certified copies of the order and letters of office and of
29 any bond.

30 15-13-403. EFFECT OF REGISTRATION. (1) Upon registration of a
31 guardianship or protective order from another state, the guardian or con-
32 servator may exercise in this state all powers authorized in the order of
33 appointment except as prohibited under the laws of this state, including
34 maintaining actions and proceedings in this state and, if the guardian or
35 conservator is not a resident of this state, subject to any conditions im-
36 posed upon nonresident parties.

37 (2) A court of this state may grant any relief available pursuant to
38 this chapter and other law of this state to enforce a registered order.

39 PART 5

40 MISCELLANEOUS PROVISIONS

41 15-13-501. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying
42 and construing this uniform act, consideration must be given to the need to
43 promote uniformity of the law with respect to its subject matter among states
44 that enact it.

1 15-13-502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
2 COMMERCE ACT. This chapter modifies, limits and supersedes the federal elec-
3 tronic signatures in global and national commerce act, 15 U.S.C. section
4 7001, et seq., but does not modify, limit or supersede section 101(c) of
5 that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any
6 of the notices described in section 103(b) of that act, 15 U.S.C. section
7 7003(b).

8 15-13-503. [RESERVED.]

9 15-13-504. TRANSITIONAL PROVISION. (1) This chapter applies to
10 guardianship and protective proceedings begun on or after July 1, 2011.

11 (2) Parts 1, 3 and 4 of this chapter and sections 15-13-501 and
12 15-13-502, Idaho Code, apply to proceedings begun before July 1, 2011, re-
13 gardless of whether a guardianship or protective order has been issued.

14 SECTION 2. That Chapter 9, Title 15, Idaho Code, be, and the same is
15 hereby repealed.

16 SECTION 3. That Chapter 10, Title 15, Idaho Code, be, and the same is
17 hereby repealed.

18 SECTION 4. That Chapter 11, Title 15, Idaho Code, be, and the same is
19 hereby repealed.