

1 SB118  
2 115592-1  
3 By Senators Orr and Little (T)  
4 RFD: Judiciary  
5 First Read: 12-JAN-10

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8 SYNOPSIS:

Under existing law, the Uniform  
9 Guardianship Act provides a system of general and  
10 limited guardianships for minors and incapacitated  
11 persons.

12 This bill would provide for the adoption of  
13 the Uniform Adult Guardianship and Protective  
14 Proceedings Jurisdiction Act which would provide an  
15 additional system to classify and address  
16 jurisdiction issues in adult guardianship cases  
17 where the guardian of an incapacitated adult is  
18 located in a different jurisdiction than the  
19 incapacitated adult. This bill would provide a  
20 procedure to facilitate cooperation between courts  
21 in different states. This bill would specify which  
22 court has jurisdiction to appoint a guardian or  
23 conservator. This bill would provide a procedure  
24 for transferring a guardianship or conservatorship  
25 proceeding from one state to another. This bill  
26 would also provide guidelines for enforcement of

1 guardianship and protective orders from other  
2 states.

3  
4 A BILL  
5 TO BE ENTITLED  
6 AN ACT

7  
8 Relating to guardianships and protective  
9 proceedings; to provide for the adoption of the Uniform Adult  
10 Guardianship and Protective Proceedings Jurisdiction Act; to  
11 provide for jurisdiction of certain cases where a party is  
12 located in a different state; to provide for transfer of adult  
13 guardianship or conservatorship proceedings to another  
14 jurisdiction; to provide for recognition and enforcement of  
15 guardianship and protective orders from other states; to amend  
16 Sections 26-2A-31, 26-2A-109, and 26-2A-131, Code of Alabama  
17 1975, of the Uniform Guardianship Act to reference the Uniform  
18 Adult Guardianship and Protective Proceedings Jurisdiction  
19 Act; and to specify that both acts are operative.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Chapter 2B of Title 26 is added to the  
22 Code of Alabama 1975, to read as follows:

23 ARTICLE 1

24 GENERAL PROVISIONS

25 §26-2B-101. SHORT TITLE. This act may be cited as  
26 the Alabama Uniform Guardianship and Protective Proceedings  
27 Jurisdiction Act.

1           §26-2B-102. DEFINITIONS. In this chapter, the  
2 following terms shall have the following meanings:

3           (1) ADULT. An individual who has attained 19 years  
4 of age or who by statute has otherwise been deemed to be an  
5 adult under the laws of the State of Alabama or the laws of  
6 another state.

7           (2) CONSERVATOR. A person appointed by the court to  
8 administer the property of an adult, including a person  
9 appointed under Section 26-2A-20(2) of the Alabama Uniform  
10 Guardianship and Protective Proceedings Act.

11           (3) COURT. A probate court of this state and  
12 includes an appropriate court of another state.

13           (4) GUARDIAN. A person appointed by the court to  
14 make decisions regarding the person of an adult, including a  
15 person appointed under Section 26-2A-20(7) of the Alabama  
16 Uniform Guardianship and Protective Proceedings Act.

17           (5) GUARDIANSHIP. An order appointing a guardian.

18           (6) GUARDIANSHIP PROCEEDING. A judicial proceeding  
19 in which an order for the appointment of a guardian is sought  
20 or has been issued.

21           (7) INCAPACITATED PERSON. An adult for whom a  
22 guardian has been appointed.

23           (8) PARTY. The respondent, petitioner, guardian,  
24 conservator, or any other person allowed by the court to  
25 participate in a guardianship or protective proceeding.

26           (9) PERSON. Except as used in the term incapacitated  
27 person or protected person, an individual, corporation,

1 business trust, estate, trust, partnership, limited liability  
2 company, association, joint venture, public corporation,  
3 government or governmental subdivision, agency, or  
4 instrumentality, or any other legal or commercial entity.

5 (10) PROTECTED PERSON. An adult for whom a  
6 protective order has been issued.

7 (11) PROTECTIVE ORDER. An order appointing a  
8 conservator or other order related to management of an adult's  
9 property.

10 (12) PROTECTIVE PROCEEDING. A judicial proceeding in  
11 which a protective order is sought or has been issued.

12 (13) RECORD. Information that is inscribed on a  
13 tangible medium or that is stored in an electronic or other  
14 medium and is retrievable in perceivable form.

15 (14) RESPONDENT. An adult for whom a protective  
16 order or the appointment of a guardian is sought.

17 (15) STATE. A state of the United States, the  
18 District of Columbia, Puerto Rico, the United States Virgin  
19 Islands, a federally recognized Indian tribe, or any territory  
20 or insular possession subject to the jurisdiction of the  
21 United States.

22 §26-2B-103. INTERNATIONAL APPLICATION OF ACT.

23 (a) A court of this state, by written order, may  
24 treat a foreign country as if it were a state of the United  
25 States for the purpose of applying this article and Articles  
26 2, 3, and 5.

1 (b) Except as otherwise provided in subsection (c),  
2 a guardianship or conservatorship determination made in a  
3 foreign country under factual circumstances in substantial  
4 conformity with the jurisdictional standards of this chapter  
5 shall be recognized and enforced under Article 3.

6 (c) A court of this state need not apply this  
7 chapter if the guardianship or conservatorship law of a  
8 foreign country violates fundamental principles of human  
9 rights.

10 §26-2B-104. COMMUNICATION BETWEEN COURTS.

11 (a) A court of this state may communicate with a  
12 court in another state concerning a proceeding arising under  
13 this chapter. The court may allow the parties to participate  
14 in the communication.

15 (b) If the parties are not allowed to participate in  
16 the communication, the court shall give all parties the  
17 opportunity to present facts and legal arguments before the  
18 court issues an order establishing jurisdiction.

19 (c) Except as otherwise provided in subsection (d),  
20 the court shall make a record of any communication under this  
21 section and promptly inform the parties of the communication  
22 and grant them access to the record.

23 (d) Courts may communicate concerning schedules,  
24 calendars, court records, and other administrative matters  
25 without making a record.

26 §26-2B-105. COOPERATION BETWEEN COURTS.

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

4 (1) Hold an evidentiary hearing.

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

7 (3) Order that an evaluation or assessment be made  
8 of the respondent.

9 (4) Order any appropriate investigation of a person  
10 involved in a proceeding.

11 (5) Forward to the court of this state a certified  
12 copy of the transcript or other record of a hearing under  
13 paragraph (1) or any other proceeding, any evidence otherwise  
14 produced under paragraph (2), and any evaluation or assessment  
15 prepared in compliance with an order under paragraph (3) or  
16 (4).

17 (6) Issue any order necessary to assure the  
18 appearance in the proceeding of a person whose presence is  
19 necessary for the court to make a determination, including the  
20 respondent or the incapacitated or protected person.

21 (7) Issue an order authorizing the release of  
22 medical, financial, criminal, or other relevant information in  
23 that state, including protected health information as defined  
24 in 45 C.F.R. Section 164.504, as amended.

25 (b) If a court of another state in which a  
26 guardianship or protective proceeding is pending requests  
27 assistance of the kind provided in subsection (a), a court of

1 this state has jurisdiction for the limited purpose of  
2 granting the request or making reasonable efforts to comply  
3 with the request.

4 §26-2B-106. TAKING TESTIMONY IN ANOTHER STATE.

5 (a) In a guardianship or protective proceeding, in  
6 addition to other procedures that may be available, testimony  
7 of a witness who is located in another state may be offered by  
8 deposition or other means allowable in this state for  
9 testimony taken in another state. The court on its own motion  
10 may order that the testimony of a witness be taken in another  
11 state and may prescribe the manner in which and the terms upon  
12 which the testimony is to be taken.

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

19 (c) Documentary evidence transmitted from another  
20 state to a court of this state by technological means that do  
21 not produce an original writing may not be excluded from  
22 evidence solely on an objection based on the means of  
23 transmission.

24 ARTICLE 2

25 JURISDICTION

26 §26-2B-201. DEFINITIONS; SIGNIFICANT CONNECTION  
27 FACTORS.



1 (a) In this article, the following terms shall have  
2 the following meanings:

3 (1) EMERGENCY. A circumstance that likely will  
4 result in substantial harm to a respondent's health, safety,  
5 or welfare, and for which the appointment of a guardian is  
6 necessary because no other person has authority and is willing  
7 to act on the respondent's behalf.

8 (2) HOME STATE. The state in which the respondent  
9 was physically present, including any period of temporary  
10 absence, for at least six consecutive months immediately  
11 before the filing of a petition for a protective order or the  
12 appointment of a guardian; or if none, the state in which the  
13 respondent was physically present, including any period of  
14 temporary absence, for at least six consecutive months ending  
15 within the six months prior to the filing of the petition.

16 (3) SIGNIFICANT-CONNECTION STATE. A state, other  
17 than the home state, with which a respondent has a significant  
18 connection other than mere physical presence and in which  
19 substantial evidence concerning the respondent is available.

20 (b) In determining under Section 26-2B-203 and  
21 subsection (e) of Section 26-2B-301 whether a respondent has a  
22 significant connection with a particular state, the court  
23 shall consider:

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

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

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

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

9           §26-2B-202. EXCLUSIVE BASIS.

10           This article provides the exclusive jurisdictional  
11 basis for a court of this state to appoint a guardian or issue  
12 a protective order for an adult.

13           §26-2B-203. JURISDICTION.

14           (a) A court of this state has jurisdiction to  
15 appoint a guardian or issue a protective order for a  
16 respondent if:

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

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

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

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

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

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

6           (iii) the court in this state concludes that it is  
7 an appropriate forum under the factors set forth in Section  
8 26-2B-206;

9           (3) this state does not have jurisdiction under  
10 either paragraph (1) or (2), the respondent's home state and  
11 all significant-connection states have declined to exercise  
12 jurisdiction because this state is the more appropriate forum,  
13 and jurisdiction in this state is consistent with the  
14 Constitutions of this state and the United States; or

15           (4) the requirements for special jurisdiction under  
16 Section 26-2B-204 are met.

17           (b) When the jurisdiction of a court of this state  
18 is contested under this article, such guardianship or  
19 protective proceeding may be removed to circuit court by the  
20 court's own motion or in accordance with Section 26-2-2.

21           (c) Nothing in this section is intended to limit the  
22 jurisdiction of those Alabama probate courts which have been  
23 granted equity jurisdiction.

24           (d) Nothing in this section shall be construed as  
25 extending the provisions of this chapter to proceedings  
26 brought pursuant to Sections 30-5-1, et seq., the Protection

1 from Abuse Act or Sections 38-9-1, et seq., the Adult  
2 Protective Services Act.

3 §26-2B-204. SPECIAL JURISDICTION.

4 (a) A court of this state lacking jurisdiction under  
5 Section 26-2B-203 has special jurisdiction to do any of the  
6 following:

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

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

12 (3) appoint a guardian or conservator for an  
13 incapacitated or protected person for whom a provisional order  
14 to transfer the proceeding from another state has been issued  
15 under procedures similar to Section 26-2B-301.

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

22 (c) The court may entertain successive petitions  
23 based upon its special jurisdiction under this section  
24 provided that the court receives no request for dismissal from  
25 the court of the respondent's home state and the court  
26 determines that the need for guardianship and/or  
27 conservatorship under this section continues.

1 §26-2B-205. EXCLUSIVE AND CONTINUING JURISDICTION.

2 Except as otherwise provided in Section 26-2B-204, a  
3 court that has appointed a guardian or issued a protective  
4 order consistent with this chapter has exclusive and  
5 continuing jurisdiction over the proceeding until it is  
6 terminated by the court or the appointment or order expires by  
7 its own terms.

8 §26-2B-206. APPROPRIATE FORUM.

9 (a) A court of this state having jurisdiction under  
10 Section 26-2B-203 to appoint a guardian or issue a protective  
11 order may decline to exercise its jurisdiction if it  
12 determines at any time that a court of another state is a more  
13 appropriate forum.

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

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

23 (1) any expressed preference of the respondent;

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

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

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

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

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

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

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

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

15 §26-2B-207. JURISDICTION DECLINED BY REASON OF  
16 CONDUCT.

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

21 (1) decline to exercise jurisdiction;

22 (2) exercise jurisdiction for the limited purpose of  
23 fashioning an appropriate remedy to ensure the health, safety,  
24 and welfare of the respondent or the protection of the  
25 respondent's property or prevent a repetition of the  
26 unjustifiable conduct, including staying the proceeding until  
27 a petition for the appointment of a guardian or issuance of a

1 protective order is filed in a court of another state having  
2 jurisdiction; or

3 (3) continue to exercise jurisdiction after  
4 considering:

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

8 (B) whether it is a more appropriate forum than the  
9 court of any other state under the factors set forth in  
10 subsection (c) of Section 26-2B-206; and

11 (C) whether the court of any other state would have  
12 jurisdiction under factual circumstances in substantial  
13 conformity with the jurisdictional standards of Section  
14 26-2B-203.

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

26 §26-2B-208. NOTICE OF PROCEEDING.

1           If a petition for the appointment of a guardian or  
2           issuance of a protective order is brought in this state and  
3           this state was not the respondent's home state on the date the  
4           petition was filed, in addition to complying with the notice  
5           requirements of this state, notice of the petition must be  
6           given to those persons who would be entitled to notice of the  
7           petition if a proceeding were brought in the respondent's home  
8           state, if any. The notice must be given in the same manner as  
9           notice is required to be given in this state, pursuant to  
10          Section 26-2A-50 of the Alabama Uniform Guardianship and  
11          Protective Proceedings Act.

12                   §26-2B-209. PROCEEDINGS IN MORE THAN ONE STATE.

13           Except for a petition for the appointment of a  
14           guardian in an emergency or issuance of a protective order  
15           limited to property located in this state under paragraph (1)  
16           or (2) of subsection (a) of Section 26-2B-204, if a petition  
17           for the appointment of a guardian or issuance of a protective  
18           order is filed in this state and in another state and neither  
19           petition has been dismissed or withdrawn, the following rules  
20           apply:

21                   (1) If the court in this state has jurisdiction  
22           under Section 26-2B-203, it may proceed with the case unless a  
23           court in another state issues an order establishing  
24           jurisdiction under provisions similar to Section 26-2B-203  
25           before the appointment or issuance of an order by the court in  
26           this state.



1           (2) If the court in this state does not have  
2 jurisdiction under Section 26-2B-203, whether at the time the  
3 petition is filed or at any time before the appointment or  
4 issuance of the order, the court shall stay the proceeding and  
5 communicate with the court in the other state. If the court in  
6 the other state has jurisdiction, the court in this state  
7 shall dismiss the petition unless the court in the other state  
8 determines that the court in this state is a more appropriate  
9 forum.

10           §26-2B-210. INFORMATION TO BE SUBMITTED TO COURT.

11           (a) Except as otherwise provided in this section,  
12 each party, in its first pleading or in an attached affidavit,  
13 shall give information, if reasonably ascertainable, under  
14 oath as to the respondent's present address or whereabouts,  
15 the places and addresses where the respondent has lived during  
16 the last five years. The pleading or affidavit must state  
17 whether the party:

18           (1) Has participated, as a party or witness or in  
19 any other capacity, in any other proceeding concerning the  
20 guardianship or conservatorship of the respondent and, if so,  
21 identify the court, the case number, and the date of the  
22 guardianship or conservatorship determination, if any;

23           (2) Knows of any proceeding that could affect the  
24 current proceeding, including, but not limited to, proceedings  
25 for the establishment, modification, termination, or  
26 enforcement of a protective order, and, if so, identify the  
27 court, the case number, and the nature of the proceeding;

1           (3) Knows the names and addresses of any person not  
2 a party to the proceeding who has physical custody of the  
3 respondent, and, if so, the names and addresses of any such  
4 person; and

5           (4) Knows the names and addresses of any person not  
6 a party to the proceeding who holds an appointment or  
7 alternate appointment as legal agent of the respondent and, if  
8 so, the names and addresses of any such person;

9           (b) If the information required by subsection (a) is  
10 not furnished, the court, upon motion of a party or its own  
11 motion, may stay the proceeding until the information is  
12 furnished.

13           (c) If the declaration as to any of the items  
14 described in paragraphs (1) through (4) of subsection (a) is  
15 in the affirmative, the declarant shall give additional  
16 information under oath as may be required by the court. The  
17 court may examine the parties and other persons under oath as  
18 to details of the information furnished and other matters  
19 pertinent to the court's jurisdiction and the disposition of  
20 the case.

21           (d) Each party has a continuing duty to inform the  
22 court of any proceeding in this or any other state that could  
23 affect the current proceeding.

24           (e) If a party alleges in an affidavit or pleading  
25 under oath that the health, safety, or liberty of a party or  
26 incapacitated person would be jeopardized by disclosure of the  
27 present address or whereabouts of a party or incapacitated

1 person, the information must be sealed and may not be  
2 disclosed to the other party or the public unless the court  
3 orders the disclosure to be made after a hearing in which the  
4 court takes into consideration the health, safety, or liberty  
5 of the party or incapacitated person and determines that the  
6 disclosure is in the interest of justice.

7 ARTICLE 3

8 TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

9 §26-2B-301. TRANSFER OF GUARDIANSHIP OR  
10 CONSERVATORSHIP TO ANOTHER STATE.

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

14 (b) Notice of a petition under subsection (a) must  
15 be given to the persons that would be entitled to notice of a  
16 petition in this state for the appointment of a guardian or  
17 conservator pursuant to Section 26-2A-103 as required by  
18 Section 26-2A-50 of the Alabama Uniform Guardianship and  
19 Protective Proceedings Act.

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

25 (d) The court shall issue a provisional order  
26 granting a petition to transfer a guardianship and shall  
27 direct the guardian to petition for guardianship in the other

1 state if the court is satisfied that the guardianship will be  
2 accepted by the court in the other state and the court finds  
3 that:

4 (1) the incapacitated person is physically present  
5 in or is reasonably expected to move permanently to the other  
6 state;

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

11 (3) plans for care and services for the  
12 incapacitated person in the other state are reasonable and  
13 sufficient.

14 (e) The court shall issue a provisional order  
15 granting a petition to transfer a conservatorship and shall  
16 direct the conservator to petition for conservatorship in the  
17 other state if the court is satisfied that the conservatorship  
18 will be accepted by the court of the other state and the court  
19 finds that:

20 (1) the protected person is physically present in or  
21 is reasonably expected to move permanently to the other state,  
22 or the protected person has a significant connection to the  
23 other state considering the factors in subsection (b) of  
24 Section 26-2B-201;

25 (2) an objection to the transfer has not been made  
26 or, if an objection has been made, the objector has not

1 established that the transfer would be contrary to the  
2 interests of the protected person; and

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

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

8 (1) a provisional order accepting the proceeding  
9 from the court to which the proceeding is to be transferred  
10 which is issued under provisions similar to Section 26-2B-302;  
11 and

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

14 (g) The court may appoint a guardian ad litem to  
15 represent the best interests of the incapacitated or protected  
16 person in any proceeding initiated by petition under  
17 subsection (a) and may require prepayment of guardian ad litem  
18 fees.

19 §26-2B-302. ACCEPTING GUARDIANSHIP OR  
20 CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE.

21 (a) To confirm transfer of a guardianship or  
22 conservatorship transferred to this state under provisions  
23 similar to Section 26-2B-301, the guardian or conservator must  
24 petition the court in this state to accept the guardianship or  
25 conservatorship. The petition must include the following:

26 (1) a certified copy of the other state's  
27 provisional order of transfer;

1           (2) an inventory of the protected person's estate as  
2 of the date of the petition including certified records of all  
3 bank accounts in the protected person's estate as of the date  
4 of the petition;

5           (3) proof of the conservator's bond; and

6           (4) any final accounting of the protected person's  
7 estate which has been submitted in the prior jurisdiction. If  
8 no such accounting was required by the transferring court, the  
9 petitioner must prepare and submit an accounting prior to  
10 acceptance.

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

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

22           (d) The court shall issue a provisional order  
23 granting a petition filed under subsection (a) unless:

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

1           (2) the guardian or conservator is ineligible for  
2 appointment in this state; or

3           (3) the petitioner fails to comply with the  
4 provisions of subsection (a).

5           (e) The court shall issue a final order accepting  
6 the proceeding and appointing the guardian or conservator as  
7 guardian or conservator in this state upon its receipt from  
8 the court from which the proceeding is being transferred of a  
9 final order issued under provisions similar to Section  
10 26-2B-301 transferring the proceeding to this state and upon  
11 compliance with Section 26-2A-139.

12           (f) Not later than 90 days after issuance of a final  
13 order accepting transfer of a guardianship or conservatorship,  
14 the court shall determine whether the guardianship or  
15 conservatorship needs to be modified to conform to the law of  
16 this state. Such modification may include, among other things,  
17 an inventory or an accounting pursuant to Sections 26-2A-146  
18 and 26-2A-147.

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

24           (h) The denial by a court of this state of a  
25 petition to accept a guardianship or conservatorship  
26 transferred from another state does not affect the ability of  
27 the guardian or conservator to seek appointment as guardian or

1 conservator in this state under Sections 26-2A-1, et seq., if  
2 the court has jurisdiction to make an appointment other than  
3 by reason of the provisional order of transfer.

4 ARTICLE 4

5 RECORDING AND RECOGNITION OF ORDERS FROM OTHER  
6 STATES

7 §26-2B-401. RECORDING OF GUARDIANSHIP ORDERS.

8 If a guardian has been appointed in another state  
9 and a petition for the appointment of a guardian is not  
10 pending in this state, the guardian appointed in the other  
11 state, after giving notice to the appointing court of an  
12 intent to register, may record the guardianship order in this  
13 state by recording as a foreign judgment in a court, in any  
14 appropriate county of this state, certified copies of the  
15 order and letters of office.

16 §26-2B-402. RECORDING OF PROTECTIVE ORDERS.

17 If a conservator has been appointed in another state  
18 and a petition for a protective order is not pending in this  
19 state, the conservator appointed in the other state, after  
20 giving notice to the appointing court of an intent to record,  
21 may record the protective order in this state by recording as  
22 a foreign judgment in a court of this state, in any county in  
23 which property belonging to the protected person is located,  
24 certified copies of the order and letters of office and of any  
25 bond.

26 §26-2B-403. EFFECT OF RECORDING.



1 (a) Upon the recording of a guardianship or  
2 protective order from another state, the guardian or  
3 conservator may exercise in this state all powers provided in  
4 Section 26-2A-160.

5 (b) A court of this state may grant any relief  
6 available under this chapter and other law of this state to  
7 enforce a recorded order.

8 ARTICLE 5

9 MISCELLANEOUS PROVISIONS

10 §26-2B-501. UNIFORMITY OF APPLICATION AND  
11 CONSTRUCTION.

12 In applying and construing this uniform act,  
13 consideration must be given to the need to promote uniformity  
14 of the law with respect to its subject matter among states  
15 that enact it.

16 §26-2B-502. RELATION TO ELECTRONIC SIGNATURES IN  
17 GLOBAL AND NATIONAL COMMERCE ACT.

18 This chapter modifies, limits, and supersedes the  
19 federal Electronic Signatures in Global and National Commerce  
20 Act, 15 U.S.C. Section 7001, et seq., but does not modify,  
21 limit, or supersede Section 101(c) of that act, 15 U.S.C.  
22 Section 7001(c), or authorize electronic delivery of any of  
23 the notices described in Section 103(b) of that act, 15 U.S.C.  
24 Section 7003(b).

25 §26-2B-503. RULE OF CONSTRUCTION.

26 Nothing in this chapter shall be construed as  
27 repealing any portion of Chapter 2A of this title, the Alabama

1 Uniform Guardianship and Protective Proceedings Act, unless  
2 specifically addressed.

3 Section 2. Sections 26-2A-31, 26-2A-109, and  
4 26-2A-131, Code of Alabama 1975, are amended to read as  
5 follows:

6 "§26-2A-31.

7 "(a) To the full extent permitted by the  
8 constitution and as permitted under Article 2 of Chapter 2B of  
9 this title, the court has jurisdiction over all subject matter  
10 relating to estates of protected persons and protection of  
11 minors and incapacitated persons.

12 "(b) The court has full power to make order,  
13 judgments, and decrees and take all other action necessary and  
14 proper to administer justice in the matters that come before  
15 it.

16 "(c) The court has jurisdiction over protective  
17 proceedings and guardianship proceedings.

18 "(d) If both guardianship and protective proceedings  
19 as to the same person are commenced or pending in the same  
20 court, the proceedings may be consolidated.

21 "(e) No provision of this chapter shall be construed  
22 to void, abate, or diminish, the powers or equity  
23 jurisdiction, when invoked, heretofore or hereafter granted by  
24 statute to certain probate courts.

25 "§26-2A-109.

26 "The authority and responsibility of a guardian of  
27 an incapacitated person terminates upon the death of the

1 guardian or ward, the determination of incapacity of the  
2 guardian, upon transfer to another state as provided in  
3 Section 26-2B-301, or upon removal or resignation as provided  
4 in Section 26-2A-110. Termination does not affect a guardian's  
5 liability for prior acts or the obligation to account for  
6 funds and assets of the ward.

7 "§26-2A-131.

8 "~~After~~ Subject to Section 26-2A-31, after the  
9 service of notice in a proceeding seeking the appointment of a  
10 conservator or other protective order and until termination of  
11 the proceeding, the court in which the petition is filed has:

12 "(1) Exclusive jurisdiction to determine the need  
13 for a conservator or other protective order until the  
14 proceedings are terminated; and

15 "(2) Exclusive jurisdiction to determine how the  
16 estate of the protected person which is subject to the laws of  
17 this state must be managed, expended, or distributed to or for  
18 the use of the protected person, the protected person's  
19 dependents, or other claimants."

20 Section 3. This act shall become effective January  
21 1, 2011.