

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

*As Engrossed: S1/25/11*  
**A Bill**

SENATE BILL 4

5 By: Senator D. Johnson  
6 By: Representative J. Edwards  
7

**For An Act To Be Entitled**

8  
9 AN ACT TO ADOPT THE UNIFORM ADULT GUARDIANSHIP *AND*  
10 *PROTECTIVE PROCEEDINGS JURISDICTION ACT; AND FOR*  
11 OTHER PURPOSES.  
12  
13

**Subtitle**

14  
15 TO ADOPT THE UNIFORM ADULT GUARDIANSHIP  
16 *AND PROTECTIVE PROCEEDINGS JURISDICTION*  
17 *ACT.*  
18  
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

22 SECTION 1. Arkansas Code Title 28 is amended to add an additional  
23 chapter 74 to read as follows:

24 ARTICLE 1. GENERAL PROVISIONS.

25 28-74-101. Short title.

26 This chapter may be cited as the Uniform Adult Guardianship and  
27 Protective Proceedings Jurisdiction Act.  
28

29 28-74-102. Definitions.

30 In this chapter:

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

33 (2) "Conservator" means a person appointed by the court to administer  
34 the property of an adult, including a person appointed under § 28-67-105.

35 (3) "Guardian" means a person appointed by the court to make decisions  
36 regarding the person of an adult, including a person appointed under §9-20-



1 101 et seq., §28-65-201 et seq., and § 28-66-101 et seq.

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

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

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

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

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

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

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

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

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

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

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

30  
31 28-74-103. International application of act.

32 A court of this state may treat a foreign country as if it were a state  
33 for the purpose of applying this article and articles two (2), three (3) and  
34 five (5).

35  
36 28-74-104. Communication between courts.

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

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

9  
10       28-74-105. Cooperation between courts.

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

14               (1) hold an evidentiary hearing;

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

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

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

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

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

30               (7) issue an order authorizing the release of medical,  
31 financial, criminal, or other relevant information in that state, including  
32 protected health information as defined in 45 C.F.R. Section 160.103 as it  
33 existed on January 15, 2011.

34       (b) If a court of another state in which a guardianship or protective  
35 proceeding is pending requests assistance of the kind provided in subsection  
36 (a), a court of this state has jurisdiction for the limited purpose of

1 granting the request or making reasonable efforts to comply with the request.

2  
3 28-74-106. Taking testimony in another state.

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

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

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

20  
21 ARTICLE 2. JURISDICTION.

22 28-74-201. Definitions; significant connection factors.

23 (a) In this article:

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

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

35 (3) "Significant-connection state" means a state, other than the  
36 home state, with which a respondent has a significant connection other than

1 mere physical presence and in which substantial evidence concerning the  
2 respondent is available.

3 (b) In determining under § 28-74-203 and subsection 28-74-301(e)  
4 whether a respondent has a significant connection with a particular state,  
5 the court shall consider:

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

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

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

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

14  
15 28-74-202. Exclusive basis.

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

18  
19 28-74-203. Jurisdiction.

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

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

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

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

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

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

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

36 (iii) the court in this state concludes that it is

1 an appropriate forum under the factors set forth in § 28-74-206;

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

7 (4) the requirements for special jurisdiction under § 28-74-204  
8 are met.

9  
10 28-74-204. Special jurisdiction.

11 (a) A court of this state lacking jurisdiction under subsections 28-  
12 74-203(1) through (3) has special jurisdiction to do any of the following:

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

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

17 (3) appoint a guardian or conservator for an incapacitated or  
18 protected person for whom a provisional order to transfer the proceeding from  
19 another state has been issued under procedures similar to § 28-74-301.

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

25  
26 28-74-205. Exclusive and continuing jurisdiction.

27 Except as otherwise provided in § 28-74-204, a court that has appointed  
28 a guardian or issued a protective order consistent with this act has  
29 exclusive and continuing jurisdiction over the proceeding until it is  
30 terminated by the court or the appointment or order expires by its own terms.

31  
32 28-74-206. Appropriate forum.

33 (a) A court of this state having jurisdiction under § 28-74-203 to  
34 appoint a guardian or issue a protective order may decline to exercise its  
35 jurisdiction if it determines at any time that a court of another state is a  
36 more appropriate forum.

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

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

8               (1) any expressed preference of the respondent;

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

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

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

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

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

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

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

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

23  
24       28-74-207. Jurisdiction declined by reason of conduct.

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

28              (1) decline to exercise jurisdiction;

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

35              (3) continue to exercise jurisdiction after considering:

36                      (A) the extent to which the respondent and all persons

1 required to be notified of the proceedings have acquiesced in the exercise of  
2 the court's jurisdiction;

3 (B) whether it is a more appropriate forum than the court  
4 of any other state under the factors set forth in subsection 28-74-206(c);  
5 and

6 (C) whether the court of any other state would have  
7 jurisdiction under factual circumstances in substantial conformity with the  
8 jurisdictional standards of § 28-74-203.

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

18  
19 28-74-208. Notice of proceeding.

20 If a petition for the appointment of a guardian or issuance of a  
21 protective order is brought in this state and this state was not the  
22 respondent's home state on the date the petition was filed, in addition to  
23 complying with the notice requirements of this state, notice of the petition  
24 must be given to those persons who would be entitled to notice of the  
25 petition if a proceeding were brought in the respondent's home state. The  
26 notice must be given in the same manner as notice is required to be given in  
27 this state.

28  
29 28-74-209. Proceedings in more than one state.

30 Except for a petition for the appointment of a guardian in an emergency  
31 or issuance of a protective order limited to property located in this state  
32 under subsections 28-74-204(a)(1) or (2), if a petition for the appointment  
33 of a guardian or issuance of a protective order is filed in this state and in  
34 another state and neither petition has been dismissed or withdrawn, the  
35 following rules apply:

36 (1) If the court in this state has jurisdiction under § 28-74-203, it



1 may proceed with the case unless a court in another state acquires  
2 jurisdiction under provisions similar to § 28-74-203 before the appointment  
3 or issuance of the order.

4 (2) If the court in this state does not have jurisdiction under § 28-  
5 74-203, whether at the time the petition is filed or at any time before the  
6 appointment or issuance of the order, the court shall stay the proceeding and  
7 communicate with the court in the other state. If the court in the other  
8 state has jurisdiction, the court in this state shall dismiss the petition  
9 unless the court in the other state determines that the court in this state  
10 is a more appropriate forum.

11  
12 ARTICLE 3. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP.

13 28-74-301. Transfer of guardianship or conservatorship to another  
14 state.

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

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

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

24 (d) The court shall issue an order provisionally granting a petition  
25 to transfer a guardianship and shall direct the guardian to petition for  
26 guardianship in the other state if the court is satisfied that the  
27 guardianship will be accepted by the court in the other state and the court  
28 finds that:

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

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

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

36 (e) The court shall issue a provisional order granting a petition to

1 transfer a conservatorship and shall direct the conservator to petition for  
2 conservatorship in the other state if the court is satisfied that the  
3 conservatorship will be accepted by the court of the other state and the  
4 court finds that:

5 (1) the protected person is physically present in or is  
6 reasonably expected to move permanently to the other state, or the protected  
7 person has a significant connection to the other state considering the  
8 factors in subsection 28-74-201(b);

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

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

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

16 (1) a provisional order accepting the proceeding from the court  
17 to which the proceeding is to be transferred which is issued under provisions  
18 similar to § 28-74-302; and

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

21  
22 28-74-302. Accepting guardianship or conservatorship transferred from  
23 another state.

24 (a) To confirm transfer of a guardianship or conservatorship  
25 transferred to this state under provisions similar to § 28-74-301, the  
26 guardian or conservator must petition the court in this state to accept the  
27 guardianship or conservatorship. The petition must include a certified copy  
28 of the other state's provisional order of transfer.

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

34 (c) On the court's own motion or on request of the guardian or  
35 conservator, the incapacitated or protected person, or other person required  
36 to be notified of the proceeding, the court shall hold a hearing on a

1 petition filed pursuant to subsection (a).

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

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

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

9 (e) The court shall issue a final order accepting the proceeding and  
10 appointing the guardian or conservator as guardian or conservator in this  
11 state upon its receipt from the court from which the proceeding is being  
12 transferred of a final order issued under provisions similar to § 28-74-301  
13 transferring the proceeding to this state.

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

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

22 (h) The denial by a court of this state of a petition to accept a  
23 guardianship or conservatorship transferred from another state does not  
24 affect the ability of the guardian or conservator to seek appointment as  
25 guardian or conservator in this state under § 9-20-101 et seq., § 28-65-201  
26 et seq., § 28-66-101 et seq., and § 28-67-101 et seq. if the court has  
27 jurisdiction to make an appointment other than by reason of the provisional  
28 order of transfer.

29  
30 ARTICLE 4. REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES.  
31 28-74-401. Registration of guardianship orders.

32 If a guardian has been appointed in another state and a petition for  
33 the appointment of a guardian is not pending in this state, the guardian  
34 appointed in the other state, after giving notice to the appointing court of  
35 an intent to register, may register the guardianship order in this state by  
36 filing as a foreign judgment in a court, in any appropriate county of this

1 state, certified copies of the order and letters of office.

2  
3 28-74-402. Registration of protective orders.

4 If a conservator has been appointed in another state and a petition for  
5 a protective order is not pending in this state, the conservator appointed in  
6 the other state, after giving notice to the appointing court of an intent to  
7 register, may register the protective order in this state by filing as a  
8 foreign judgment in a court of this state, in any county in which property  
9 belonging to the protected person is located, certified copies of the order  
10 and letters of office and of any bond.

11  
12 28-74-403. Effect of registration.

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

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

21  
22 ARTICLE 5. MISCELLANEOUS PROVISIONS.

23 28-74-501. Uniformity of application and construction.

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

27  
28 28-74-502. Relation to electronic signatures in global and national  
29 commerce act.

30 This act modifies, limits, and supersedes the federal Electronic  
31 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et  
32 seq., but does not modify, limit, or supersede Section 101(c) of that act, 15  
33 U.S.C. Section 7001(c), or authorize electronic delivery of any of the  
34 notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

35  
36 28-74-503. [Reserved.]

1       28-74-504. Transitional provision.

2       (a) This act applies to guardianship and protective proceedings begun  
3 on or after [the effective date].

4       (b) Articles one (1), three (3), and four (4) and § 28-74-501 and 502  
5 apply to proceedings begun before January 1, 2012, regardless of whether a  
6 guardianship or protective order has been issued.

7  
8       28-74-505. Effective date.

9       This act takes effect on January 1, 2012.

10  
11       SECTION 2. Arkansas Code § 9-20-108, concerning court jurisdiction, is  
12 amended to add an additional subsection to read as follows:

13       (g) The appropriate jurisdiction for an action under this chapter that  
14 involves a maltreated adult and a party residing outside the state shall be  
15 determined under §§ 28-74-101 -- 28-74-504.

16  
17       SECTION 3. Arkansas Code § 28-65-103, concerning applicability of  
18 other acts in guardianships, is amended to add an additional subsection to  
19 read as follows:

20       (g) The appropriate jurisdiction for an adult guardianship action  
21 under this chapter that involve a party residing outside the state shall be  
22 determined under §§ 28-74-101 -- 28-74-504.

23  
24       SECTION 4. Arkansas Code § 28-65-107, concerning the jurisdiction of  
25 courts in guardianship actions, is amended to add an additional subsection to  
26 read as follows:

27       (d) The appropriate jurisdiction for an adult guardianship action  
28 under this chapter that involve a party residing outside the state shall be  
29 determined under §§ 28-74-101 -- 28-74-504.

30  
31       SECTION 5. Arkansas Code § 28-65-202, concerning venue for  
32 guardianship actions, is amended to add an additional subsection to read as  
33 follows:

34       (d) The appropriate venue for an adult guardianship action under this  
35 chapter that involve a party residing outside the state shall be determined  
36 under §§ 28-74-101 -- 28-74-504.

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*SECTION 6. Arkansas Code Title 28, Chapter 65, Subchapter 6 is amended to add an additional section to read as follows:*

28-65-604. Applicability.

This subchapter does not apply to foreign guardianships under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, § 28-74-101 et seq.

SECTION 7. Arkansas Code § 28-67-102 is amended to read as follows:

28-67-102. Jurisdiction of the court.

(a) All laws relative to the jurisdiction of the circuit court over the estate of a person under guardianship as an incompetent person, including the investment, management, sale, or mortgage of his or her property and the payment of his or her debts, shall be applicable to the estate of a person under conservatorship.

(b) Court jurisdiction for adult guardianship actions and conservatorship actions that involve a party residing outside the state shall be determined under §§ 28-74-101 -- 28-74-504.

/s/D. Johnson