

HOUSE No. 02181

The Commonwealth of Massachusetts

PRESENTED BY:

Anne M. Gobi

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act regarding uniform adult guardianship.

PETITION OF:

NAME:

Anne M. Gobi

DISTRICT/ADDRESS:

5th Worcester

HOUSE No. 02181

By Ms. Gobi of Spencer, a petition (accompanied by bill, House, No. 2181) of Gobi relative to uniform adult guardianship Joint Committee on the Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act regarding uniform adult guardianship.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. (a) Following the appointment of a guardian or conservator or entry of another
2 protective order, the court making the appointment or entering the order may transfer the
3 proceeding to a court in or another county in this state or in the case of a minor to another state if
4 the court is satisfied that a transfer will serve the best interest of the ward or protected person.

5 (b) A guardian of a minor, conservator of a minor, or like fiduciary for a minor
6 appointed in another state may petition the court for appointment as a guardian or
7 conservator in this state if the state has jurisdiction. The appointment may be made upon proof of
8 appointment in the other state and presentation of a certified copy of the portion of the court
9 record in the other state specified by the court in this state. Notice of hearing on the petition,
10 together with a copy of the petition, must be given to the ward or protected person, if the ward or
11 protected person has attained 14 years of age, and to the persons who would be entitled to notice

12 if the regular procedures for appointment of a guardian or conservator under this article were
13 applicable. The court shall make the appointment in this state unless it concludes that the
14 appointment would not be in the best interest of
15 the ward or protected person. Upon the filing of an acceptance of office and any required bond,
16 the court shall issue appropriate letters of guardianship or conservatorship. Within 14 days after
17 an appointment, the guardian or conservator shall send or deliver a copy of the order of
18 appointment to the ward or protected person, if the ward or protected person has attained 14
19 years of age, and to all persons given notice of the hearing on the petition.

20 SECTION 2. Definitions.

21 (a) "Adult" means an individual who has attained 18 years of age.

22 (b) "Conservator" means a person appointed by the court to administer the property
23 of an adult.

24 (c) "Guardian" means a person appointed by the court to make decisions regarding
25 the person of an adult.

26 (d) "Guardianship order" means an order appointing a guardian.

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

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

30 (g) "Party" means the respondent, petitioner, guardian, conservator, or any other

31 person allowed by the court to participate in a guardianship or protective proceeding.

32 (h) "Person," except in the term incapacitated person or protected person, means an
33 individual, corporation, business trust, estate, trust, partnership, limited liability company,
34 association, joint venture, public corporation, government or governmental subdivision, agency,
35 or instrumentality, or any other legal or commercial entity.

36 (i) "Protected person" means an adult for whom a protective order has been issued.

37 (j) "Protective order" means an order appointing a conservator or any other order
38 related to management of an adult's property.

39 (k) "Protective proceeding" means a judicial proceeding in which an protective
40 order is sought or has been issued.

41 (l) "Record" means information that is inscribed on a tangible medium or that is
42 stored in an electronic or other medium and is retrievable in perceivable form.

43 (m) "Respondent" means an adult for whom a protective order or the appointment
44 of a guardian is sought.

45 (n) "State" means a state of the United States, the District of Columbia, the
46 commonwealth of Puerto Rico, the United States Virgin Islands, a federally recognized Indian
47 tribe, or any territory or insular possession subject to the jurisdiction of the United States.

48 SECTION 3. A court of this state may treat a foreign country as if it were a state for the
49 purpose of applying the Sections of this Act.

50 SECTION 4. (a) A court of this state may communicate with a court in another state concerning
51 a proceeding arising under the Sections of this Act. The court may allow the parties to
52 participate in the communication. Except as otherwise provided in paragraph (b), the court shall
53 make a record of the communication. The record may be limited to the fact that the
54 communication occurred.

55 (c) Courts may communicate concerning schedules, calendars, court records, and
56 other administrative matters without making a record.

57 SECTION 5. (a) In a guardianship or protective proceeding in this state, a court of this state
58 may request the appropriate court of another state to do any one or more of the following:

59 (1) hold an evidentiary hearing;

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

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

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

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

67 (6) issue any order necessary to assure the appearance in the proceeding of a
68 person whose presence is necessary for the court to make a determination, including the
69 respondent or the incapacitated or protected person; and
70 (7) issue an order authorizing the release of medical, financial, criminal, or other
71 relevant information in that state, including protected health information as defined in Code of
72 Federal Regulations, title 45, section 164.504.

73 (b) If a court of another state in which a guardianship or protective proceeding is pending
74 requests assistance of the kind provided in paragraph (a), a court of this state has jurisdiction for
75 the limited purpose of granting the request or making reasonable efforts to comply with the
76 request.

77 SECTION 6. (a) In a guardianship or protective proceeding, in addition to other procedures that
78 may be available, testimony of a witness who is located in another state may be offered by
79 deposition or other means allowable in this state for testimony taken in another state. The court
80 on its own motion may order that the testimony of a witness be taken in another
81 state and may prescribe the manner in which and the terms upon which the testimony
82 is to be taken.

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

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

90 SECTION 7. (a) For purposes of this Act: (1) "emergency" means a circumstance that likely
91 will result in substantial harm to
92 a respondent's health, safety, or welfare, and for which the appointment of a guardian is
93 necessary because no other person has authority and is willing to act on the respondent's behalf;

94 (2) "home state" means the state in which the respondent was physically present,
95 including any period of temporary absence, for at least six consecutive months
96 immediately before the filing of a petition for a protective order or the appointment of a
97 guardian; or if none, the state in which the respondent was physically present, including any
98 period of temporary absence, for at least six consecutive months ending within the six months
99 prior to the filing of the petition; and

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

103 (b) In determining whether a respondent has a significant connection with a particular state, the
104 court shall consider:

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

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

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

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

113 SECTION 8.

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

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

117 (2) on the date the petition is filed, this state is a significant-connection state and: (i) the
118 respondent does not have a home state or a court of the respondent's home

119 state has declined to exercise jurisdiction because this state is a more appropriate forum; or (ii)
120 the respondent has a home state, a petition for an appointment or order is not pending in a court
121 of that state or another significant-connection state, and, before the court makes the appointment
122 or issues the order:

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

124 (B) an objection to the court's jurisdiction is not filed by a person required to be notified of the
125 proceeding; and

126 (C) the court in this state concludes that it is an appropriate forum under the factors set forth in
127 this Act;

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

132 (4) the requirements for special jurisdiction under this Act are met.

133 SECTION 9. (a) A court of this state has jurisdiction to do any of the following:

134 (1) appoint a guardian in an emergency for a term not exceeding 90 days for a

135 respondent who is physically present in this state;

136 (2) issue a protective order with respect to real or tangible personal property located

137 in this state; and

138 (3) appoint a guardian or conservator for an incapacitated or protected person for

139 whom a provisional order to transfer the proceeding from another state has been issued under

140 procedures similar to this Act.

141 (b) If a petition for the appointment of a guardian in an emergency is brought in this

142 state and this state was not the respondent's home state on the date the petition was filed, the

143 court shall dismiss the proceeding at the request of the court of the home state, if any, whether

144 dismissal is requested before or after the emergency appointment.

145 SECTION 10. Except as otherwise provided in this Act, a court that has appointed a guardian or
146 issued a protective order consistent with state law has exclusive and continuing jurisdiction over
147 the proceeding until it is terminated by the court or the appointment or order expires by its own
148 terms.

149 SECTION 11. (a) A court of this state having jurisdiction to appoint a guardian or issue a
150 protective order may decline to exercise its jurisdiction if it determines at any time that a court of
151 another state is a more appropriate forum.

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

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

158 (1) any expressed preference of the respondent;

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

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

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

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

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

166 (7) the ability of the court in each state to decide the issue expeditiously and the procedures

167 necessary to present evidence;

168 (8) the familiarity of the court of each state with the facts and issues in the

169 proceeding; and

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

171 conservator.

172 SECTION 12. (a) If at any time a court of this state determines that it acquired jurisdiction to

173 appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

174 (1) decline to exercise jurisdiction;

175 (2) exercise jurisdiction for the limited purpose of fashioning an appropriate

176 remedy to ensure the health, safety, and welfare of the respondent or the protection of the

177 respondent's property or prevent a repetition of the unjustifiable conduct, including staying the

178 proceeding until a petition for the appointment of a guardian or issuance of a protective order is

179 filed in a court of another state having jurisdiction; or

180 (3) continue to exercise jurisdiction after considering:

181 (i) the extent to which the respondent and all persons required to be notified of the proceedings

182 have acquiesced in the exercise of the court's jurisdiction;

183 (ii) whether it is a more appropriate forum than the court of any other state under the factors set
184 forth in this Act; and

185 (iii) whether the court of any other state would have jurisdiction under factual
186 circumstances in substantial conformity within the jurisdictional standards.

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

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

199 SECTION 14. Except for a petition for the appointment of a guardian in an emergency or
200 issuance of a protective order limited to property located in this state, if a petition for the
201 appointment of a guardian or issuance of a protective order is filed in this state and in another
202 state and neither petition has been dismissed or withdrawn, the following rules apply:

203 (1) If the court in this state has jurisdiction, it may proceed

204 with the case unless a court in another state acquires jurisdiction before the appointment or
205 issuance of the order.

206 (2) If the court in this state does not have jurisdiction, whether at the time the petition is filed or
207 at any time before the appointment or issuance of the order, the court shall stay the proceeding
208 and communicate with the court in the other state. If the court in the other state has jurisdiction,
209 the court in this state shall dismiss the petition unless the court in the other state determines that
210 the court in this state is a more appropriate forum.

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

213 (b) Notice of a petition under paragraph (a) must be given to the persons that

214 would be entitled to notice of a petition in this state for the appointment of a guardian or
215 conservator.

216 (c) On the court's own motion or on request of the guardian or conservator, the

217 incapacitated or protected person, or other person required to be notified of the petition, the court
218 shall hold a hearing on a petition filed pursuant to paragraph (a).

219 (d) The court shall issue an order provisionally granting a petition to transfer a

220 guardianship and shall direct the guardian to petition for guardianship in the other state if the
221 court is satisfied that the guardianship will be accepted by the court in the other state and the
222 court finds that:

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

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

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

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

231 conservatorship and shall direct the conservator to petition for conservatorship in the

232 other state if the court is satisfied that the conservatorship will be accepted by the court of the

233 other state and the court finds that:

234 (1) the protected person is physically present in or is reasonably expected to move permanently
235 to the other state, or the protected person has a significant connection to the other state
236 considering the factors in section 524.5-701, paragraph (b);

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

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

241 (f) The court shall issue a final order confirming the transfer and terminating the

242 guardianship or conservatorship upon its receipt of:

243 (1) a provisional order accepting the proceeding from the court to which the

244 proceeding is to be transferred; and

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

246 SECTION 16. (a) To confirm transfer of a guardianship or conservatorship transferred to this
247 state, the guardian or conservator must petition the court in this state to accept the guardianship
248 or conservatorship. The petition must include a certified copy of the other state's provisional
249 order of transfer.

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

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

257 (d) The court shall issue an order provisionally granting a petition filed under
258 paragraph (a) unless:

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

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

262 (e) The court shall issue a final order accepting the proceeding and appointing the
263 guardian or conservator as guardian or conservator in this state upon its receipt from
264 the court from which the proceeding is being transferred of a final order issued under
265 provisions transferring the proceeding to this state.

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

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

273 (h) The denial by a court of this state of a petition to accept a guardianship or
274 conservatorship transferred from another state does not affect the ability of the guardian or
275 conservator to seek appointment as guardian or conservator in this state under this Act if the
276 court has jurisdiction to make an appointment other than by reason of the provisional order of
277 transfer.

278 SECTION 17. If a guardian has been appointed in another state and a petition for the
279 appointment of a guardian is not pending in this state, the guardian appointed in the other state,
280 after giving notice to the appointing court of an intent to register, may register the guardianship

281 order in this state by filing as a foreign judgment in a court, in any appropriate county of this
282 state, certified copies of the order and letters of office.

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

288 SECTION 19. (a) Upon registration of a guardianship or protective order from another state, the
289 guardian or conservator may exercise in this state all powers authorized in the order of
290 appointment except as prohibited under the laws of this state, including maintaining actions and
291 proceedings in this state and, if the guardian or conservator is not a resident of this state, subject
292 to any conditions imposed upon nonresident parties.

293 (b) A court of this state may grant relief to enforce a registered order.