

1 H.79

2 Introduced by Representatives Clarkson of Woodstock, French of Randolph
3 and Haas of Rochester

4 Referred to Committee on

5 Date:

6 Subject: Decedents' estates and fiduciary duties; uniform adult guardianship
7 and protective proceedings jurisdiction

8 Statement of purpose: This bill proposes to enact the Uniform Adult
9 Guardianship and Protective Proceedings Jurisdiction Act in Vermont. The act
10 establishes which state has jurisdiction to make the initial guardianship
11 decision, provides for transfer of guardianship cases between jurisdictions, and
12 allows recognition of an out-of-state guardian's authority to deal with issues in
13 the state on a limited basis.

14 An act relating to uniform adult guardianship and protective proceedings
15 jurisdiction

16 It is hereby enacted by the General Assembly of the State of Vermont:

17 Sec. 1. 14 V.S.A. chapter 114 is added to read:

18 CHAPTER 114. UNIFORM ADULT GUARDIANSHIP AND
19 PROTECTIVE PROCEEDINGS JURISDICTION ACT

20 Subchapter 1. General Provisions

1 § 3151. SHORT TITLE

2 This act may be cited as the Uniform Adult Guardianship and Protective
3 Proceedings Jurisdiction Act.

4 § 3152. DEFINITIONS

5 In this act:

6 (1) “Adult” means an individual who has attained 18 years of age.

7 (2) “Conservator” means a person appointed by the court to administer
8 the property of an adult.

9 (3) “Guardian” means a person appointed by the court to make decisions
10 regarding an adult, including a person appointed under Title 14.

11 (4) “Guardianship order” means an order appointing a guardian.

12 (5) “Guardianship proceeding” means a judicial proceeding in which an
13 order for the appointment of a guardian is sought or has been issued.

14 (6) “Incapacitated person” means an adult for whom a guardian has been
15 appointed.

16 (7) “Party” means the respondent, petitioner, guardian, conservator, or
17 any other person allowed by the court to participate in a guardianship or
18 protective proceeding.

19 (8) “Person,” except in the term “incapacitated person” or “protected
20 person,” means an individual, corporation, business trust, estate, trust,
21 partnership, limited liability company, association, joint venture, public

1 corporation, government or governmental subdivision, agency, or
2 instrumentality, or any other legal or commercial entity.

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

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

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

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

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

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

18 § 3153. INTERNATIONAL APPLICATION OF ACT

19 A court of this state may treat a foreign country as if it were a state for the
20 purpose of applying this subchapter and subchapters 2, 3, and 5 of this chapter.

1 § 3154. COMMUNICATION BETWEEN COURTS

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

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

10 § 3155. COOPERATION BETWEEN COURTS

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

14 (1) hold an evidentiary hearing;

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

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

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

20 (5) forward to the court of this state a certified copy of the transcript or
21 other record of a hearing under subdivision (1) of this subsection or any other

1 proceeding, any evidence otherwise produced under subdivision (2) of this
2 subsection, and any evaluation or assessment prepared in compliance with an
3 order under subdivision (3) or (4) of this subsection;

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

7 (7) issue an order authorizing the release of medical, financial, criminal,
8 or other relevant information in that state, including protected health
9 information as defined in 45 C.F.R. Section 164.504, as amended, *but any*
10 *information so disclosed may be admitted in a proceeding in this state only in*
11 *accordance with the laws of this state.*

12 (b) If a court of another state in which a guardianship or protective
13 proceeding is pending requests assistance of the kind provided in subsection
14 (a) of this section, a court of this state has jurisdiction for the limited purpose
15 of granting the request or making reasonable efforts to comply with the request
16 *in accordance with the laws of this state.*

17 § 3156. TAKING TESTIMONY IN ANOTHER STATE

18 (a) In a guardianship or protective proceeding, in addition to other
19 procedures that may be available, testimony of a witness who is located in
20 another state may be offered by deposition or other means allowable in this
21 state for testimony taken in another state. The probate division of the superior

1 court on its own motion may order that the testimony of a witness be taken in
2 another state and may prescribe the manner in which and the terms upon which
3 the testimony is to be taken.

4 (b) In a guardianship or protective proceeding, a probate division of the
5 superior court in this state may permit a witness located in another state to be
6 deposed or to testify by telephone or audiovisual or other electronic means.
7 The probate division of this state shall cooperate with the court of the other
8 state in designating an appropriate location for the deposition or testimony.

9 (c) Documentary evidence transmitted from another state to a probate
10 division of the superior court of this state by technological means that do not
11 produce an original writing may not be excluded from evidence on an
12 objection based on the best evidence rule.

13 Subchapter 2. Jurisdiction

14 § 3161. DEFINITIONS; SIGNIFICANT CONNECTION FACTORS

15 (a) In this subchapter:

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

20 (1) "Emergency" means a circumstance that likely will result in serious
21 and irreparable harm to a respondent's physical health, safety, or welfare, and

1 for which the appointment of a guardian is necessary because no other person
2 has authority and is willing to act on the respondent's behalf.

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

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

14 (b) In determining under section 3163 and subsection 3171(e) of this title
15 whether a respondent has a significant connection with a particular state, the
16 probate court shall consider:

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

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

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

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

4 § 3162. EXCLUSIVE BASIS

5 This subchapter provides the exclusive jurisdictional basis for a probate
6 division of the superior court of this state to appoint a guardian or issue a
7 protective order for an adult. The probate division of the superior court shall
8 have exclusive original jurisdiction to determine whether this state has
9 jurisdiction pursuant to this subchapter.

10 § 3163. JURISDICTION

11 A probate division of the superior court of this state has jurisdiction to
12 appoint a guardian or issue a protective order for a respondent if:

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

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

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

19 (B) the respondent has a home state, a petition for an appointment or
20 order is not pending in a court of that state or another significant-connection

1 state, and, before the probate division makes the appointment or issues the
2 order:

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

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

7 (iii) the probate division of the superior court in this state
8 concludes that it is an appropriate forum under the factors set forth in section
9 3166 of this title;

10 (3) this state does not have jurisdiction under either subdivision (1) or
11 (2) of this section, the respondent's home state, and all significant-connection
12 states have declined to exercise jurisdiction because this state is the more
13 appropriate forum, 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 section 3164 of this
16 title are met.

17 § 3164. SPECIAL JURISDICTION

18 (a) A probate division of the superior court of this state lacking jurisdiction
19 under section 3163 of this title has special jurisdiction to do any of the
20 following:

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

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

5 (3) appoint a guardian or conservator for an incapacitated or protected
6 person for whom a provisional order to transfer the proceeding from another
7 state has been issued under procedures similar to section 3171 of this title.

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

13 § 3165. EXCLUSIVE AND CONTINUING JURISDICTION

14 Except as otherwise provided in section 3164 of this title, a court that has
15 appointed a guardian or issued a protective order consistent with this act has
16 exclusive jurisdiction over the proceeding until jurisdiction is terminated by
17 the probate court or the appointment or order expires by its own terms.

18 § 3166. APPROPRIATE FORUM

19 (a) A probate division of the superior court of this state having jurisdiction
20 under section 3163 of this title to appoint a guardian or issue a protective order

1 may decline to exercise its jurisdiction if it determines at any time that a court
2 of another state is a more appropriate forum.

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

9 (c) In determining whether it is an appropriate forum, the probate division
10 shall consider all relevant factors, including:

11 (1) any expressed preference of the respondent;

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

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

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

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

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

20 (7) the ability of the court of each state to decide the issue expeditiously
21 and the procedures necessary to present evidence;

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

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

5 § 3167. JURISDICTION DECLINED BY REASON OF CONDUCT

6 (a) If at any time a probate division of the superior court of this state
7 determines that it acquired jurisdiction to appoint a guardian or issue a
8 protective order because of unjustifiable conduct, the court may:

9 (1) decline to exercise jurisdiction;

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

16 (3) continue to exercise jurisdiction after considering:

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

20 (B) whether it is a more appropriate forum than the court of any other
21 state under the factors set forth in subsection 3166(c) of this title; and

1 (C) whether the court of any other state would have jurisdiction
2 under factual circumstances in substantial conformity with the jurisdictional
3 standards of section 3163 of this title.

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

13 § 3168. NOTICE OF PROCEEDING

14 If a petition for the appointment of a guardian or issuance of a protective
15 order is brought in this state and this state was not the respondent's home state
16 on the date the petition was filed, the petitioner shall comply with the notice
17 requirements of this state and shall give notice of the petition to those persons
18 who would be entitled to notice of the petition if a proceeding were brought in
19 the respondent's home state. The notice must be given in the same manner as
20 notice is required to be given in this state.

21 § 3169. PROCEEDINGS IN MORE THAN ONE STATE

1 Except for a petition for the appointment of a guardian in an emergency or
2 issuance of a protective order limited to property located in this state under
3 subdivision 3164(a)(1) or (2) of this title, if a petition for the appointment of a
4 guardian or issuance of a protective order is filed in this state and in another
5 state and neither petition has been dismissed or withdrawn, the following rules
6 apply:

7 (1) If the probate division of the superior court in this state has
8 jurisdiction under section 3163 of this title, it may proceed with the case unless
9 a court in another state acquires jurisdiction under provisions similar to section
10 3163 of this title before the appointment or issuance of the order.

11 (2) If the probate division of the superior court in this state does not
12 have jurisdiction under section 3163 of this title, whether at the time the
13 petition is filed or at any time before the appointment or issuance of the order,
14 the probate division shall stay the proceeding and communicate with the court
15 in the other state. If the court in the other state has jurisdiction, the probate
16 division in this state shall dismiss the petition unless the court in the other state
17 determines that the probate division of the superior court in this state is a more
18 appropriate forum.

19 Subchapter 3. Transfer of Guardianship or Conservatorship

20 § 3171. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO
21 ANOTHER STATE

1 (a) A guardian or conservator appointed in this state may petition the
2 probate division of the superior court to transfer the guardianship or
3 conservatorship to another state.

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

7 (c) On the probate division's own motion or on request of the guardian or
8 conservator, the incapacitated or protected person, or other person required to
9 be notified of the petition, the court shall hold a hearing on the petition filed
10 pursuant to subsection (a) of this section.

11 (d) The probate division shall issue an order provisionally granting a
12 petition to transfer a guardianship and shall direct the guardian to petition for
13 guardianship in the other state if the court is satisfied that the guardianship will
14 be accepted by the court in the other state and the probate court finds that:

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

17 (2) an objection to the transfer has not been made or, if any objection
18 has been made, the objector has not established that the transfer would be
19 contrary to the interests of the incapacitated person; and

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

1 (e) The probate division shall issue a provisional order granting a petition
2 to transfer a conservatorship and shall direct the conservator to petition for
3 conservatorship in the other state if the court is satisfied that the
4 conservatorship will be accepted by the court of the other state and the court
5 finds that:

6 (1) the protected person is physically present in or is reasonably
7 expected to move permanently to the other state, or the protected person has a
8 significant connection to the other state considering the factors in subsection
9 3161(b) of this chapter;

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

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

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

17 (1) a provisional order accepting the proceeding from the court to which
18 the proceeding is to be transferred which is issued under provisions similar to
19 section 3172 of this title; and

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

1 § 3172. ACCEPTING GUARDIANSHIP TRANSFERRED FROM
2 ANOTHER STATE

3 (a) To confirm transfer of a guardianship or conservatorship transferred to
4 this state under provisions similar to section 3171 of this title, the guardian or
5 conservator must petition the probate division of the superior court in this state
6 to accept the guardianship or conservatorship. The petition must also include a
7 certified copy of the other state's provisional order of transfer.

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

13 (c) On the probate division's own motion or on request of the guardian or
14 conservator, the incapacitated or protected person, or other person required to
15 be notified of the proceeding, the court shall hold a hearing on a petition filed
16 pursuant to subsection (a) of this section.

17 (d) The probate division shall issue an order provisionally granting a
18 petition filed under subsection (a) of this section unless:

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

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

2 (e) The probate division shall issue a final order accepting the proceeding
3 and appointing the guardian or conservator as guardian in this state upon its
4 receipt from the court from which the proceeding is being transferred of a final
5 order issued under provisions similar to section 3171 of this title transferring
6 the proceeding to this state.

7 (f) Not later than 90 days after issuance of a final order accepting transfer
8 of a guardianship or conservatorship, the probate division shall determine
9 whether the guardianship or conservatorship needs to be modified to conform
10 to the law of this state.

11 (g) In granting a petition under this section, the probate division shall
12 recognize a guardianship or conservatorship order from another state,
13 including the determination of the incapacitated or protected person's
14 incapacity and the appointment of the guardian or conservator.

15 (h) The denial by a probate division of the superior court of this state of a
16 petition to accept a guardianship or conservatorship transferred from another
17 state does not affect the ability of the guardian or conservator to seek
18 appointment as guardian in this state under this title if the probate division has
19 jurisdiction to make an appointment other than by reason of the provisional
20 order of transfer.

1 Subchapter 4. Registration and Recognition of Orders

2 from Other States

3 § 3181. REGISTRATION OF GUARDIANSHIP ORDERS

4 If a guardian has been appointed in another state and a petition for the
5 appointment of a guardian is not pending in this state, the guardian appointed
6 in the other state, after giving notice to the appointing court of an intent to
7 register, may register the guardianship order in this state by filing as a foreign
8 judgment in a probate division of the superior court, in any appropriate county
9 of this state, certified copies of the order and letters of office.

10 § 3182. REGISTRATION OF PROTECTIVE ORDERS

11 If a conservator has been appointed in another state and a petition for a
12 protective order is not pending in this state, the conservator appointed in the
13 other state, after giving notice to the appointing court of an intent to register,
14 may register the protective order in this state by filing as a foreign judgment in
15 a probate division of the superior court of this state, in any county of this state
16 in which property belonging to the protected person is located, certified copies
17 of the order and letters of office and of any bond.

18 § 3183. EFFECT OF REGISTRATION

19 (a) Upon registration of a guardianship or protective order from another
20 state, the guardian may exercise in this state all powers authorized in the order
21 of appointment except as prohibited under the laws of this state, including

1 maintaining actions and proceedings in this state and, if the guardian is not a
2 resident of this state, subject to any conditions imposed upon nonresident
3 parties.

4 (b) A probate division of the superior court of this state may grant any
5 relief available under this act and other law of this state to enforce a registered
6 order.

7 Subchapter 5. Miscellaneous Provisions

8 § 3191. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

12 § 3192. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
13 NATIONAL COMMERCE ACT

14 This act modifies, limits, and supersedes the federal Electronic Signatures
15 in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not
16 modify, limit, or supersede section 101(c) of that act, 15 U.S.C. § 7001(c), or
17 authorize electronic delivery of any of the notices described in section 103(b)
18 of that act, 15 U.S.C. § 7003(b).

19 § 3193. TRANSITIONAL PROVISION

20 (a) This act applies to guardianship and protective proceedings begun on or
21 after July 1, 2011.

1 (b) Subchapters 1, 3, and 4 of this chapter and sections 3191 and 3192 of
2 this title apply to proceedings begun before July 1, 2011, regardless of whether
3 a guardianship or protective order has been issued.

4 Sec. 2. 14 V.S.A. § 3062 is amended to read:

5 § 3062. JURISDICTION; REVIEW OF GUARDIAN'S ACTIONS

6 (a) If this state has jurisdiction of a guardianship proceeding pursuant to
7 chapter 114 of this title, then the probate division of the superior court shall
8 have exclusive jurisdiction over the proceedings. All proceedings to determine
9 whether this court has jurisdiction pursuant to chapter 114 of this title shall be
10 brought in probate division of the superior court.

11 (b) The probate division of the superior court shall have exclusive original
12 jurisdiction over all proceedings brought under the authority of this chapter or
13 pursuant to 18 V.S.A. § 9718.

14 ~~(b)~~(c) The probate division of the superior court shall have supervisory
15 authority over guardians. Any interested person may seek review of a
16 guardian's proposed or past actions by filing a motion with the court.

17 Sec. 3. EFFECTIVE DATE

18 This act shall take effect on July 1, 2011.