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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **632**

February 9, 2009

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The bill was read for the first time and referred to the Committee on Civil Justice

March 26, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

1.1 A bill for an act
1.2 relating to probate; enacting the Uniform Adult Guardianship and Protective
1.3 Proceedings Jurisdiction Act; changing certain jurisdiction transfer provisions;
1.4 amending Minnesota Statutes 2008, section 524.5-107; proposing coding for new
1.5 law in Minnesota Statutes, chapter 524.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2008, section 524.5-107, is amended to read:

1.8 **524.5-107 TRANSFER OF JURISDICTION.**

1.9 (a) Following the appointment of a guardian or conservator or entry of another
1.10 protective order, the court making the appointment or entering the order may transfer
1.11 the proceeding to a court ~~in~~ or another county in this state or in the case of a minor to
1.12 another state if the court is satisfied that a transfer will serve the best interest of the ward
1.13 or protected person.

1.14 (b) A guardian of a minor, conservator of a minor, or like fiduciary for a minor
1.15 appointed in another state may petition the court for appointment as a guardian or
1.16 conservator in this state if the state has jurisdiction. The appointment may be made upon
1.17 proof of appointment in the other state and presentation of a certified copy of the portion
1.18 of the court record in the other state specified by the court in this state. Notice of hearing
1.19 on the petition, together with a copy of the petition, must be given to the ward or protected
1.20 person, if the ward or protected person has attained 14 years of age, and to the persons
1.21 who would be entitled to notice if the regular procedures for appointment of a guardian
1.22 or conservator under this article were applicable. The court shall make the appointment
1.23 in this state unless it concludes that the appointment would not be in the best interest of
1.24 the ward or protected person. Upon the filing of an acceptance of office and any required

bond, the court shall issue appropriate letters of guardianship or conservatorship. Within 14 days after an appointment, the guardian or conservator shall send or deliver a copy of the order of appointment to the ward or protected person, if the ward or protected person has attained 14 years of age, and to all persons given notice of the hearing on the petition.

Sec. 2. **[524.5-601] SHORT TITLE.**

Sections 524.5-601 to 524.5-903 may be cited as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act."

Sec. 3. **[524.5-602] DEFINITIONS.**

(a) The definitions in this section apply to sections 524.5-602 to 524.5-903.

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

(c) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under sections 524.5-101 to 524.5-502.

(d) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under sections 524.5-101 to 524.5-502.

(e) "Guardianship order" means an order appointing a guardian.

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

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

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

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

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

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

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

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

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

3.1 (o) "State" means a state of the United States, the District of Columbia, the
3.2 commonwealth of Puerto Rico, the United States Virgin Islands, a federally recognized
3.3 Indian tribe, or any territory or insular possession subject to the jurisdiction of the United
3.4 States.

3.5 Sec. 4. **[524.5-603] INTERNATIONAL APPLICATION.**

3.6 A court of this state may treat a foreign country as if it were a state for the purpose
3.7 of applying sections 524.5-601 to 524.5-903.

3.8 Sec. 5. **[524.5-604] COMMUNICATION BETWEEN COURTS.**

3.9 (a) A court of this state may communicate with a court in another state concerning
3.10 a proceeding arising under sections 524.5-601 to 524.5-903. The court may allow the
3.11 parties to participate in the communication. Except as otherwise provided in paragraph
3.12 (b), the court shall make a record of the communication. The record may be limited to
3.13 the fact that the communication occurred.

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

3.16 Sec. 6. **[524.5-605] COOPERATION BETWEEN COURTS.**

3.17 (a) In a guardianship or protective proceeding in this state, a court of this state may
3.18 request the appropriate court of another state to do any one or more of the following:

3.19 (1) hold an evidentiary hearing;

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

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

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

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

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

3.31 (7) issue an order authorizing the release of medical, financial, criminal, or other
3.32 relevant information in that state, including protected health information as defined in
3.33 Code of Federal Regulations, title 45, section 164.504.

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

Sec. 7. [524.5-606] TAKING TESTIMONY IN ANOTHER STATE.

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

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

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

Sec. 8. [524.5-701] DEFINITIONS; SIGNIFICANT CONNECTION FACTORS.

(a) In sections 524.5-701 to 524.5-709:

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

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

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

(b) In determining under sections 534.5-703 and 524.5-801, paragraph (e), whether a respondent has a significant connection with a particular state, the court shall consider:

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

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

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

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

Sec. 9. [524.5-702] EXCLUSIVE BASIS.

Sections 524.5-701 to 524.5-709 provide the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

Sec. 10. [524.5-703] JURISDICTION.

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

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

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

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

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

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

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

(C) the court in this state concludes that it is an appropriate forum under the factors set forth in section 524.5-706;

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

(4) the requirements for special jurisdiction under section 524.5-704 are met.

6.1 Sec. 11. **[524.5-704] SPECIAL JURISDICTION.**

6.2 (a) A court of this state lacking jurisdiction under section 524.5-703 has special
6.3 jurisdiction to do any of the following:

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

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

6.8 (3) appoint a guardian or conservator for an incapacitated or protected person for
6.9 whom a provisional order to transfer the proceeding from another state has been issued
6.10 under procedures similar to section 524.5-801.

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

6.15 Sec. 12. **[524.5-705] EXCLUSIVE AND CONTINUING JURISDICTION.**

6.16 Except as otherwise provided in section 524.5-704, a court that has appointed a
6.17 guardian or issued a protective order consistent with sections 524.5-601 to 524.5-903 has
6.18 exclusive and continuing jurisdiction over the proceeding until it is terminated by the
6.19 court or the appointment or order expires by its own terms.

6.20 Sec. 13. **[524.5-706] APPROPRIATE FORUM.**

6.21 (a) A court of this state having jurisdiction under section 524.5-703 to appoint a
6.22 guardian or issue a protective order may decline to exercise its jurisdiction if it determines
6.23 at any time that a court of another state is a more appropriate forum.

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

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

6.30 (1) any expressed preference of the respondent;

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

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

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

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

(6) the nature and location of the evidence;

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

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

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

Sec. 14. **[524.5-707] JURISDICTION DECLINED BY REASON OF CONDUCT.**

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

(1) decline to exercise jurisdiction;

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

(3) continue to exercise jurisdiction after considering:

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

(ii) whether it is a more appropriate forum than the court of any other state under the factors set forth in section 524.5-706, paragraph (c); and

(iii) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 524.5-703.

(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses

8.1 of any kind against this state or a governmental subdivision, agency, or instrumentality of
8.2 this state unless authorized by law other than sections 524.5-601 to 524.5-903.

8.3 **Sec. 15. [524.5-708] NOTICE OF PROCEEDING.**

8.4 If a petition for the appointment of a guardian or issuance of a protective order is
8.5 brought in this state and this state was not the respondent's home state on the date the
8.6 petition was filed, in addition to complying with the notice requirements of this state,
8.7 notice of the petition must be given to those persons who would be entitled to notice of the
8.8 petition if a proceeding were brought in the respondent's home state. The notice must be
8.9 given in the same manner as notice is required to be given in this state.

8.10 **Sec. 16. [524.5-709] PROCEEDINGS IN MORE THAN ONE STATE.**

8.11 Except for a petition for the appointment of a guardian in an emergency or issuance
8.12 of a protective order limited to property located in this state under section 524.5-704,
8.13 paragraph (a), clause (1) or (2), if a petition for the appointment of a guardian or issuance
8.14 of a protective order is filed in this state and in another state and neither petition has been
8.15 dismissed or withdrawn, the following rules apply:

8.16 (1) If the court in this state has jurisdiction under section 524.5-703, it may proceed
8.17 with the case unless a court in another state acquires jurisdiction under provisions similar
8.18 to section 524.5-703 before the appointment or issuance of the order.

8.19 (2) If the court in this state does not have jurisdiction under section 524.5-703,
8.20 whether at the time the petition is filed or at any time before the appointment or issuance
8.21 of the order, the court shall stay the proceeding and communicate with the court in the
8.22 other state. If the court in the other state has jurisdiction, the court in this state shall
8.23 dismiss the petition unless the court in the other state determines that the court in this
8.24 state is a more appropriate forum.

8.25 **Sec. 17. [524.5-801] TRANSFER OF GUARDIANSHIP OR**
8.26 **CONSERVATORSHIP TO ANOTHER STATE.**

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

8.29 (b) Notice of a petition under paragraph (a) must be given to the persons that
8.30 would be entitled to notice of a petition in this state for the appointment of a guardian
8.31 or conservator.

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

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

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

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

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

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

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

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

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

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

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 524.5-802; and

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

Sec. 18. **[524.5-802] ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE.**

10.1 (a) To confirm transfer of a guardianship or conservatorship transferred to this state
10.2 under provisions similar to section 524.5-801, the guardian or conservator must petition
10.3 the court in this state to accept the guardianship or conservatorship. The petition must
10.4 include a certified copy of the other state's provisional order of transfer.

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

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

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

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

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

10.17 (e) The court shall issue a final order accepting the proceeding and appointing the
10.18 guardian or conservator as guardian or conservator in this state upon its receipt from
10.19 the court from which the proceeding is being transferred of a final order issued under
10.20 provisions similar to section 524.5-801 transferring the proceeding to this state.

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

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

10.28 (h) The denial by a court of this state of a petition to accept a guardianship or
10.29 conservatorship transferred from another state does not affect the ability of the guardian or
10.30 conservator to seek appointment as guardian or conservator in this state under sections
10.31 524.5-101 to 524.5-502 if the court has jurisdiction to make an appointment other than by
10.32 reason of the provisional order of transfer.

10.33 **Sec. 19. [524.5-901] REGISTRATION OF GUARDIANSHIP ORDERS.**

10.34 If a guardian has been appointed in another state and a petition for the appointment
10.35 of a guardian is not pending in this state, the guardian appointed in the other state, after

11.1 giving notice to the appointing court of an intent to register, may register the guardianship
11.2 order in this state by filing as a foreign judgment in a court, in any appropriate county of
11.3 this state, certified copies of the order and letters of office.

11.4 Sec. 20. **[524.5-902] REGISTRATION OF PROTECTIVE ORDERS.**

11.5 If a conservator has been appointed in another state and a petition for a protective
11.6 order is not pending in this state, the conservator appointed in the other state, after giving
11.7 notice to the appointing court of an intent to register, may register the protective order in
11.8 this state by filing as a foreign judgment in a court of this state, in any county in which
11.9 property belonging to the protected person is located, certified copies of the order and
11.10 letters of office and of any bond.

11.11 Sec. 21. **[524.5-903] EFFECT OF REGISTRATION.**

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

11.17 (b) A court of this state may grant relief available under sections 524.5-601 to
11.18 524.5-903 and other law of this state to enforce a registered order.

11.19 Sec. 22. **EFFECTIVE DATE.**

11.20 Sections 1 to 21 are effective January 1, 2010, and apply to guardianship and
11.21 protective proceedings begun on or after that date, except that Minnesota Statutes, sections
11.22 524.5-601 to 524.5-606 and 524.5-801 to 524.5-903, apply to proceedings begun before
11.23 that date, regardless of whether a guardianship or protective order has been issued.