

## SIDE-BY-SIDE

### ARTICLE 5- Protection of Persons under disabilities and their property

<b>ARTICLE 5: Part 7- EXISTING CODE LANGUAGE</b>	<b>Bill # S. 1243- Article 5- Part 7</b>
Article 5.Part 7. SC Adult Guardianship and Protective Proceedings	Article 5.Part 7.
<p><b>SECTION 62-5-700.</b> Short title.</p> <p>This act may be cited as the “South Carolina Adult Guardianship and Protective Proceedings Jurisdiction Act”.</p> <p><b>SECTION 62-5-701.</b> Exclusive jurisdiction.</p> <p>Notwithstanding another provision of law, this part provides the exclusive jurisdictional basis for a court of this State to appoint a guardian or issue a protective order for an adult.</p>	<p><b>SECTION 62-5-700.</b></p> <p>This <del>act</del> part may be cited as the ‘South Carolina Adult Guardianship and Protective Proceedings Jurisdiction Act’.</p> <p><b>REPORTER’S COMMENTS</b></p> <p>The title to the Act succinctly describes the Act’s scope. The Act applies only to court jurisdiction and related topics for adults for whom the appointment of a guardian or conservator or other protective order is being sought or has been issued.</p> <p>The drafting committee of the Uniform Law Commission elected to limit the Act to adults for two reasons. First, jurisdictional issues concerning guardians for minors are subsumed by the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Second, while the UCCJEA does not address conservatorship and other issues involving the property of minors, all of the problems and concerns that led the Uniform Law Commission to appoint a drafting committee involved adults.</p> <p>Part 7 is a slightly modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act drafted by the Uniform Law Commission</p> <p><b>SECTION 62-5-701.</b></p> <p>Notwithstanding another provision of law, this part provides the exclusive jurisdictional basis for a court of this State to appoint a guardian or issue a protective order for an adult.</p>

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<p><b>SECTION 62-5-702.</b> Definitions.</p> <p>As used in this part, the term:</p> <p>(1) “Adult” means an individual who has attained eighteen years of age or who has been emancipated by a court of competent jurisdiction.</p> <p>(2) “Conservator” means a person appointed by a court to manage an estate of a protected person.</p> <p>(3) “Court” means a probate court in this State or a court in another state with the same jurisdiction as a probate court in this State.</p> <p>(4) “Emergency” means circumstances that will likely result in substantial harm to a respondent’s health, safety, or welfare or substantial economic loss or expense.</p> <p>(5) “Guardian” means a person who has qualified as a guardian of an incapacitated person pursuant to a court appointment, but excludes one who is a guardian ad litem or a statutory guardian.</p> <p>(6) “Guardianship order” means an order appointing a guardian.</p> <p>(7) “Guardianship proceeding” means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.</p> <p>(8) “Home state” means the state in which the respondent was physically present, including a 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 a period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.</p> <p>(9) “Incapacitated person” means an adult for whom a guardian or conservator has been appointed.</p> <p>(10) “Party” means the respondent, petitioner, guardian, conservator, or other person allowed by the court to participate in a guardianship or</p>	<p><b>REPORTER’S COMMENTS</b></p> <p>All guardianship proceedings and protective proceedings for an adult incapacitated person must comply with the provisions of Part 7.</p> <p><b>SECTION 62-5-702.</b></p> <p>As used in this part, the term:</p> <p><del>(1) ‘Adult’ means an individual who has attained eighteen years of age or who has been emancipated by a court of competent jurisdiction.</del></p> <p><del>(2) ‘Conservator’ means a person appointed by a court to manage an estate of a protected person.</del></p> <p><del>(3) ‘Court’ means a probate court in this State or a court in another state with the same jurisdiction as a probate court in this State.</del></p> <p><del>(4) ‘Emergency’ means circumstances that will likely result in substantial harm to a respondent’s health, safety, or welfare or substantial economic loss or expense.</del></p> <p><del>(5) ‘Guardian’ means a person who has qualified as a guardian of an incapacitated person pursuant to a court appointment, but excludes one who is a guardian ad litem or a statutory guardian.</del></p> <p><del>(6) ‘Guardianship order’ means an order appointing a guardian.</del></p> <p><del>(7) ‘Guardianship proceeding’ means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.</del></p> <p><del>(8) ‘Home state’ means the state in which the respondent was physically present, including a 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 a period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.</del></p> <p><del>(9) ‘Incapacitated person’ means an adult for whom a guardian or conservator has been appointed.</del></p> <p><del>(10) ‘Party’ means the respondent, petitioner, guardian, conservator, or other person allowed by the court to participate in a guardianship or</del></p>

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<p>protective proceeding.</p> <p>(11) “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 another legal or commercial entity.</p> <p>(12) “Protected person” means an adult for whom a protective order has been issued.</p> <p>(13) “Protective order” means an order appointing a conservator or a court order relating to the management of property of an incapacitated person.</p> <p>(14) “Protective proceeding” means a judicial proceeding in which a protective order is sought or has been issued.</p> <p>(15) “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.</p> <p>(16) “Respondent” means an adult for whom a protective order or the appointment of a guardian is sought.</p> <p>(17) “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. In determining pursuant to Sections 62-5-707 and 62-5-714(E) whether a respondent has a significant connection with a particular state, the court shall consider the:</p> <p>(a) location of the respondent’s family and other persons required to be notified of the guardianship or protective proceeding;</p> <p>(b) length of time the respondent at any time was physically present in the state and the duration of any absence;</p> <p>(c) location of the respondent’s property; and</p> <p>(d) extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver’s license, social relationship, and receipt of services.</p> <p>(18) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally</p>	<p><del>protective proceeding.</del></p> <p><del>(11) ‘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 another legal or commercial entity.</del></p> <p><del>(12) ‘Protected person’ means an adult for whom a protective order has been issued.</del></p> <p><del>(13) ‘Protective order’ means an order appointing a conservator or a court order relating to the management of property of an incapacitated person.</del></p> <p><del>(14) ‘Protective proceeding’ means a judicial proceeding in which a protective order is sought or has been issued.</del></p> <p><del>(15) ‘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.</del></p> <p><del>(16) ‘Respondent’ means an adult for whom a protective order or the appointment of a guardian is sought.</del></p> <p><del>(17) ‘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. In determining pursuant to Sections 62-5-707 and 62-5-714(E) whether a respondent has a significant connection with a particular state, the court shall consider the:</del></p> <p><del>(a) location of the respondent’s family and other persons required to be notified of the guardianship or protective proceeding;</del></p> <p><del>(b) length of time the respondent at any time was physically present in the state and the duration of any absence;</del></p> <p><del>(c) location of the respondent’s property; and</del></p> <p><del>(d) extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver’s license, social relationship, and receipt of services.</del></p> <p><del>(18) ‘State’ means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally</del></p>

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<p>recognized Indian tribe, or a territory or insular possession subject to the jurisdiction of the United States.  (19) “Ward” means a person for whom a guardian has been appointed.</p> <p><b>SECTION 62-5-703.</b> Treatment of foreign countries.</p> <p>The court may treat a foreign country as if it were a state for the purpose of applying this part.</p>	<p><del>recognized Indian tribe, or a territory or insular possession subject to the jurisdiction of the United States.</del>  (19) <del>‘Ward’ means a person for whom a guardian has been appointed.</del> <u>The terms used in this part have the same <i>definition</i> as set forth in Section 62-5-101.</u></p> <p><b>SECTION 62-5-703.</b></p> <p><del>The</del> <u>A</u> court <u>of this State</u> may treat a foreign country as if it were a state for the purpose of applying this part.</p> <p><b>REPORTER’S COMMENTS</b>  This section addresses application of the Act to guardianship and protective orders issued in other countries. A foreign order is not enforceable pursuant to the registration procedures of Sections 62-5-716 through 62-5-718, but a court in this country may otherwise apply this Act to a foreign proceeding as if the foreign country were an American state. Consequently, a court may conclude that the court in the foreign country has jurisdiction because it constitutes the primary respondent’s ‘home state’ or ‘significant-connection state’ and may therefore decline to exercise jurisdiction on the ground that the court of the foreign country has a higher priority under Section 62-5-707. Or the court may treat the foreign country as if it were a state of the United States for purposes of applying the transfer provisions of Sections 62-5-714 through 62-5-715.</p> <p>This section addresses similar issues to but differs in result from Section 105 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Under the UCCJEA, the United States court must honor a custody order issued by the court of a foreign country if the order was issued under factual circumstances in substantial conformity with the jurisdictional standards of the UCCJEA. Only if the child custody law violates fundamental principles of human rights is enforcement excused. Because guardianship regimes vary so greatly around the world, particularly in civil law countries, it was concluded</p>

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<p><b>SECTION 62-5-704.</b> Court communication with court in another state; record required; exceptions; participation of parties.</p> <p>(A) The court may communicate with a court in another state concerning a proceeding arising pursuant to this article. The court shall allow the parties to participate in a discussion between courts on the merits of a proceeding. Except as otherwise provided in subsection (B), the court shall make a record of the communication. When a discussion on the merits of a proceeding between courts is held, the record must show that the parties were given an opportunity to participate, must summarize the issues discussed, and must list the participants to the discussion. In all other matters except as provided in subsection (B), the record may be limited to the fact that the communication occurred.</p> <p>(B) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record. A court may allow the parties to a proceeding to participate in any communications held pursuant to this subsection.</p>	<p>that under this Act a more flexible approach was needed. Under this Act, a court may but is not required to recognize the foreign order.</p> <p>The fact that a guardianship or protective order of a foreign country cannot be enforced pursuant to the registration procedures of Sections 62-7-716 through 62-5-718 does not preclude enforcement by the court under some other provision or rule of law.</p> <p><b>SECTION 62-5-704.</b></p> <p>(A) <del>The</del> <u>A</u> court <u>of this State</u> may communicate with a court in another state concerning a proceeding arising pursuant to this <del>article</del> <u>part</u>. The court shall allow the parties to participate in a discussion between courts on the merits of a proceeding. Except as otherwise provided in subsection (B), the court shall make a record of the communication. When a discussion on the merits of a proceeding between courts is held, the record must show that the parties were given an opportunity to participate, must summarize the issues discussed, and must list the participants to the discussion. In all other matters except as provided in subsection (B), the record may be limited to the fact that the communication occurred.</p> <p>(B) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record. A court may allow the parties to a proceeding to participate in any communications held pursuant to this subsection.</p> <p><b>REPORTER’S COMMENTS</b></p> <p>This section emphasizes the importance of communications among courts with an interest in a particular matter. Most commonly, this would include communication between courts of different states to resolve an issue of which court has jurisdiction to proceed under Sections 62-5-707 through 62-5-713. It would also include communication between courts of different states to facilitate the transfer of a guardianship or conservatorship to a different state under</p>

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<p><b>SECTION 62-5-705.</b> Requests to court of another state; requests from court of another state.</p> <p>(A) In a guardianship or protective proceeding in this State, the court may request the appropriate court of another state to do any of the</p>	<p>Sections 62-5-714 through 62-5-715. Communication can occur in a variety of ways, including by electronic means. This section does not prescribe the use of any particular means of communication.</p> <p>The court may authorize the parties to participate in the communication; but, unless there is to be a discussion on the merits, the Act does not mandate participation or require that the court give the parties notice of any communication. Communication between courts is often difficult to schedule and participation by the parties may be impractical. Phone calls or electronic communications often have to be made after-hours or whenever the schedules of judges allow. When issuing a jurisdictional or transfer order, the court should set forth the extent to which a communication with another court may have been a factor in the decision.</p> <p>South Carolina amended the Uniform Act to provide that the parties to a proceeding must be given an opportunity to participate in any discussion between courts on the merits of a proceeding. This section does not prescribe the extent of the record that the court must make, leaving that issue to the court. A record might include notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum summarizing a conversation, and email communications. No record need be made of relatively inconsequential matters such as scheduling, calendars, and court records.</p> <p>Section 110 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) addresses similar issues as this section but is more detailed. As is the case with several other provisions of this Act, the drafters of this Act concluded that the more varied circumstances of adult guardianship and protective proceedings suggested a need for greater flexibility.</p> <p><b>SECTION 62-5-705.</b></p> <p>(A) In a guardianship or protective proceeding in this State, the court may request the appropriate court of another state to <del>do any of the</del></p>

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<p>following:</p> <p>(1) hold an evidentiary hearing;</p> <p>(2) order a person in that state to produce evidence or give testimony pursuant to procedures of that state;</p> <p>(3) order that an evaluation or assessment be made of the respondent;</p> <p>(4) order an appropriate investigation of a person involved in a proceeding;</p> <p>(5) forward to the court a certified copy of the transcript or other record of a hearing pursuant to item (1) or another proceeding, evidence otherwise produced pursuant to item (2), and an evaluation or assessment prepared in compliance with an order pursuant to item (3) or (4);</p> <p>(6) issue an order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; and</p> <p>(7) issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. Section 164.504.</p> <p>(B) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (A), the court has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.</p>	<p>following:</p> <p>(1) hold an evidentiary hearing;</p> <p>(2) order a person in that state to produce <del>evidence</del> or give <del>testimony</del> <u>evidence</u> pursuant to procedures of that state;</p> <p>(3) order that an evaluation or assessment be made of the <u>primary</u> respondent, or order any appropriate investigation of a person involved in a proceeding;</p> <p><del>(4) order an appropriate investigation of a person involved in a proceeding;</del></p> <p><del>(5)</del> forward to the court <u>of this State</u> a certified copy of the transcript or other record of a hearing pursuant to item (1) or another proceeding, <u>any</u> evidence otherwise <del>produced</del> <u>presented</u> pursuant to item (2), and an evaluation or assessment prepared in compliance with <del>an order</del> <u>the request</u> pursuant to item (3) <del>or (4)</del>;</p> <p><del>(6)</del><u>(5)</u> issue an order necessary to assure the appearance <del>in the proceeding</del> of a person <del>whose presence</del> is necessary <del>for the court</del> to make a determination, including the <u>primary</u> respondent or the incapacitated or protected person; and</p> <p><del>(7)</del><u>(6)</u> issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. Section 164.504.</p> <p>(B) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (A), <del>the</del> <u>a</u> court <u>of this State</u> has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.</p> <p><b>REPORTER’S COMMENTS</b></p> <p>Subsection (A) of this section is similar to Section 112(a) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), although modified to address issues of concern in adult guardianship and protective proceedings and with the addition of subsection (A)(6), which addresses the release of health information protected under HIPAA. Subsection (B), which clarifies that a court has jurisdiction to</p>

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<p><b>SECTION 62-5-706.</b> Testimony of witness located in another state; permitted means of giving testimony; lack of original writing.</p> <p>(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.</p> <p>(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. The court shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.</p> <p>(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 means of transmission.</p>	<p>respond to requests for assistance from courts in other states even though it might otherwise not have jurisdiction over the proceeding, is not found in although probably implicit in the UCCJEA.</p> <p>Court cooperation is essential to the success of this Act. This section is designed to facilitate such court cooperation. It provides mechanisms for courts to cooperate with each other in order to decide cases in an efficient manner without causing undue expense to the parties. Courts may request assistance from courts of other states and may assist courts of other states.</p> <p>This section does not address assessment of costs and expenses, leaving that issue to local law. Should a court have acquired jurisdiction because of a party’s unjustifiable conduct, Section 62-5-711(B) authorizes the court to assess against the party all costs and expenses, including attorney’s fees.</p> <p><b>SECTION 62-5-706.</b></p> <p>(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.</p> <p>(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. <del>The</del> <u>A</u> court of <u>this State</u> shall cooperate with the <del>court courts</del> of <del>the other state states</del> in designating an appropriate location for the deposition or testimony.</p> <p>(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 means of transmission.</p>



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<p><b>SECTION 62-5-707.</b> Jurisdiction of court.</p> <p>The court has jurisdiction to appoint a guardian or issue a protective order for a respondent if:</p> <ul style="list-style-type: none"> <li>(1) this State is the respondent’s home state;</li> <li>(2) on the date the petition is filed, this State is a significant-connection state; and <ul style="list-style-type: none"> <li>(a) 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</li> <li>(b) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another</li> </ul> </li> </ul>	<p><b>REPORTER’S COMMENTS</b></p> <p>This section is similar to Section 111 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). That section was in turn derived from Section 316 of the Uniform Interstate Family Support Act (1992) and the much earlier and now otherwise obsolete Uniform Interstate and International Procedure Act (1962).</p> <p>This section is designed to fill the vacuum that often exists in cases involving an adult with interstate contacts when much of the essential information about the individual is located in another state.</p> <p>Subsection (A) empowers the court to initiate the gathering of out-of-state evidence, including depositions, written interrogatories and other discovery devices. The authority granted to the court in no way precludes the gathering of out-of-state evidence by a party, including the taking of depositions out-of-state.</p> <p>Subsections (B) and (C) clarify that modern modes of communication are permissible for the taking of depositions and receipt of documents into evidence.</p> <p>This section is consistent with and complementary to the Uniform Interstate Depositions and Discovery Act (2007), which specifies the procedure for taking depositions in other states.</p> <p><b>SECTION 62-5-707.</b></p> <p>The court has jurisdiction to appoint a guardian or issue a protective order for a respondent if:</p> <ul style="list-style-type: none"> <li>(1) this State is the <u>primary</u> respondent’s home state;</li> <li>(2) on the date the petition is filed, this State is a significant-connection state; and <ul style="list-style-type: none"> <li>(a) the <u>primary</u> respondent does not have a home state or a court of the <u>primary</u> respondent’s home state has declined to exercise jurisdiction because this State is a more appropriate forum; or</li> <li>(b) the <u>primary</u> respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another</li> </ul> </li> </ul>

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<p>significant-connection state and, before the court makes the appointment or issues the order:</p> <p>(i) a petition for an appointment or order is not filed in the respondent’s home state;</p> <p>(ii) an objection to the court’s jurisdiction is not filed by a person required to be notified of the proceeding; and</p> <p>(iii) the court concludes that it is an appropriate forum pursuant to the factors provided in Section 62-5-710(C);</p> <p>(3) this State does not have jurisdiction pursuant to either item (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</p> <p>(4) the requirements for special jurisdiction pursuant to Section 62-5-708 are met.</p>	<p>significant-connection state and, before the court makes the appointment or issues the order:</p> <p>(i) a petition for an appointment or order is not filed in the <u>primary</u> respondent’s home state;</p> <p>(ii) an objection to the court’s jurisdiction is not filed by a person required to be notified of the proceeding; and</p> <p>(iii) the court concludes that it is an appropriate forum pursuant to the factors provided in Section 62-5-710(C);</p> <p>(3) this State does not have jurisdiction pursuant to either item (1) or (2), the <u>primary</u> 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</p> <p>(4) the requirements for special jurisdiction pursuant to Section 62-5-708 are met.</p> <p><b>REPORTER’S COMMENTS</b></p> <p>Similar to the Uniform Child Jurisdiction and Enforcement Act (1997), this Act creates a three-level priority for determining which state has jurisdiction to appoint a guardian or issue a protective order; the home state (62-5-101(11)), followed by a significant-connection state (62-5-101(21)), followed by other jurisdictions. The principal objective of this section is to eliminate the possibility of dual appointments or orders except for the special circumstances specified in Section 62-7-708.</p> <p>While this section is the principal provision for determining whether a particular court has jurisdiction to appoint a guardian or issue a protective order, it is not the only provision. As indicated in the cross-reference in subsection (4), a court that does not otherwise have jurisdiction under Section 62-5-707 may have jurisdiction under the special circumstances specified in Section 62-5-708.</p> <p>Pursuant to subsection (1), the home state has primary jurisdiction to appoint a guardian or conservator or issue another type of protective</p>

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	<p>order. This jurisdiction terminates if the state ceases to be the home state, if a court of the home state declines to exercise jurisdiction under Section 62-5-710 on the basis that another state is a more appropriate forum, or, as provided in Section 62-5-709, a court of another state has appointed a guardian or issued a protective order consistent with this Act. The standards by which a home state that has enacted the Act may decline jurisdiction on the basis that another state is a more appropriate forum are specified in Section 62-5-710. Should the home state not have enacted the Act, subsection (1) does not require that the declination meet the standards of Section 62-5-710.</p> <p>Once a petition is filed in a court of the primary respondent's home state, that state does not cease to be the primary respondent's home state upon the passage of time even though it may be many months before an appointment is made or order issued and during that period the primary respondent is physically located. Only upon dismissal of the petition can the court cease to be the home state due to the passage of time. Under the definition of 'home state,' the six-month physical presence requirement is fulfilled or not on the date the petition is filed.</p> <p>A significant-connection state has jurisdiction under two possible bases; subsections (2)(a) and (2)(b). Under subsection (2)(a), a significant-connection state has jurisdiction if the individual does not have a home state or if the home state has declined jurisdiction on the basis that the significant-connection state is a more appropriate forum.</p> <p>Subsection (2)(b) is designed to facilitate consideration of cases where jurisdiction is not in dispute. Subsection (2)(b) allows a court in a significant-connection state to exercise jurisdiction even though the primary respondent has a home state and the home state has not declined jurisdiction. The significant-connection state may assume jurisdiction under these circumstances, however, only in situations where the parties are not in disagreement concerning which court should hear the case. Jurisdiction may not be exercised by a significant-connection state under subsection (2)(b) if (1) a petition has already been filed and is still pending in the home state or other significant-connection state; or (2) prior to making the appointment or</p>

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<p><b>SECTION 62-5-708.</b> Special jurisdiction.</p> <p>(A) The court lacking jurisdiction pursuant to Section 62-5-707(1) through (3) has special jurisdiction to do any of the following:</p> <p>(1) appoint a guardian in an emergency pursuant to this article for a term not exceeding ninety days for a respondent who is physically present in this State;</p> <p>(2) issue a protective order with respect to real or tangible personal property located in this State; or</p> <p>(3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued pursuant to procedures similar to Section 62-5-714.</p> <p>(B) If a petition for the appointment of a guardian in an emergency is</p>	<p>issuing the order, a petition is filed in the primary respondent’s home state or an objection to the court’s jurisdiction is filed by a person required to be notified of the proceeding. Additionally, the court in the significant-connection state must conclude that it is an appropriate forum applying the factors listed in Section 62-5-710.</p> <p>There is nothing comparable to subsection (2)(b) in the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Under Section 201 of the UCCJEA a court in a significant-connection state acquires jurisdiction only if the child does not have a home state or the court of that state has declined jurisdiction. The drafters of this Act concluded that cases involving adults differed sufficiently from child custody matters that a different rule is appropriate for adult proceedings in situations where jurisdiction is uncontested.</p> <p>Pursuant to subsection (3), a court in a state that is neither the home state nor a significant-connection state has jurisdiction if the home state and all significant-connection states have declined jurisdiction or the primary respondent does not have a home state or significant-connection state. The state must have some connection with the proceeding, however. As subsection (3) clarifies, jurisdiction in the state must be consistent with the state and United States constitutions.</p> <p><b>SECTION 62-5-708.</b></p> <p>(A) <del>The A</del> <u>A</u> court of this State lacking jurisdiction pursuant to Section 62-5-707(1) through (3) has <del>special</del> jurisdiction to do any of the following:</p> <p>(1) appoint a guardian in an emergency <del>pursuant to this article</del> for a term not exceeding <del>ninety days</del> <u>six months</u> for a <u>primary</u> respondent who is physically <del>present</del> <u>located</u> in this State;</p> <p>(2) issue a protective order with respect to real or tangible personal property located in this State; or</p> <p>(3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued <del>pursuant to procedures</del></p>

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<p>brought in this State pursuant to this article and this State was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.</p>	<p><del>similar to as provided in Section 62-5-714</del> <u>62-5-715.</u></p> <p>(B) If a petition for the appointment of a guardian in an emergency is brought in this State pursuant to this article and this State was not the <u>primary</u> respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.</p> <p><b>REPORTER'S COMMENTS</b></p> <p>This section lists the special circumstances where a court without jurisdiction under the general rule of Section 62-5-707 has jurisdiction for limited purposes. The three purposes are (1) the appointment of a guardian in an emergency for a term not exceeding six months for a primary respondent who is physically located in the state (subsection (A)(1)); (2) the issuance of a protective order for a primary respondent who owns an interest in real or tangible personal property located in the state (subsection (A)(2)); and (3) the grant of jurisdiction to consider a petition requesting the transfer of a guardianship or conservatorship proceeding from another state (subsection (A)(3)). If the court has jurisdiction under Section 62-5-707, reference to Section 62-5-708 is unnecessary. The general jurisdiction granted under Section 62-5-707 includes within it all of the special circumstances specified in this section.</p> <p>When an emergency arises, action must often be taken on the spot in the place where the primary respondent happens to be physically located at the time. This place may not necessarily be located in the primary respondent's home state or even a significant-connection state. Subsection (A)(1) assures that the court where the primary respondent happens to be physically located at the time has jurisdiction to appoint a guardian in an emergency but only for a limited period of six months. As provided in subsection (B), the emergency jurisdiction is also subject to the authority of the court in the primary respondent's home state to request that the emergency proceeding be dismissed. The theory here is that the emergency appointment in the temporary location</p>

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<p><b>SECTION 62-5-709.</b> Exclusive and continuing jurisdiction; exception.</p> <p>Except as otherwise provided in Section 62-5-708, a court that has appointed a guardian or issued a protective order consistent with this article has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by</p>	<p>should not be converted into a de facto permanent appointment through repeated temporary appointments.</p> <p>Subsection (A)(2) grants a court jurisdiction to issue a protective order with respect to real and tangible personal property located in the state even though the court does not otherwise have jurisdiction. Such orders are most commonly issued when a conservator has been appointed but the protected person owns real property located in another state. The drafters specifically rejected using a general reference to any property located in the state because of the tendency of some courts to issue protective orders with respect to intangible personal property such as a bank account where the technical situs of the asset may have little relationship to the protected person.</p> <p>Subsection (A)(3) is closely related to and is necessary for the effectiveness of Section 62-5-714, which addresses transfer of a guardianship or conservatorship to another state. A ‘Catch-22’ arises frequently in such cases. The court in the transferring state will not allow the incapacitated or protected person to move and will not terminate the case until the court in the transferee state has accepted the matter. But the court in the transferee state will not accept the case until the incapacitated or protected person has physically moved and presumably become a resident of the transferee state. Subsection (A)(3), which grants the court in the transferee state limited jurisdiction to consider a petition requesting transfer of a proceeding from another state, is intended to unlock the stalemate.</p> <p>Not included in this section but a provision also conferring special jurisdiction on the court is Section 62-5-705(B), which grants the court jurisdiction to respond to a request for assistance from a court of another state.</p> <p><b>SECTION 62-5-709.</b></p> <p>Except as otherwise provided in Section 62-5-708, a court that has appointed a guardian or issued a protective order consistent with this <del>article</del> <u>part</u> has exclusive and continuing jurisdiction over the</p>

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<p>its own terms.</p>	<p>proceeding until it is terminated by the court or the appointment or order expires by its own terms.</p> <p><b>REPORTER’S COMMENTS</b></p> <p>While this Act relies heavily on the Uniform Child Jurisdiction and Enforcement Act (1997) for many basic concepts, the identity is not absolute. Section 202 of the UCCJEA specifies a variety of circumstances whereby a court can lose jurisdiction based on loss of physical presence by the child and others, loss of a significant connection, or unavailability of substantial evidence. Section 203 of the UCCJEA addresses the jurisdiction of the court to modify a custody determination made in another state. Nothing comparable to either UCCJEA section is found in this Act. Under this Act, a guardianship or protective order may be modified only upon request to the court that made the appointment or issued the order, which retains exclusive and continuing jurisdiction over the proceeding. Unlike child custody matters, guardianships and protective proceedings are ordinarily subject to continuing court supervision. Allowing the court’s jurisdiction to terminate other than by its own order would open the possibility of competing guardianship or conservatorship appointments in different states for the same person at the same time, the problem under current law that enactment of this Act is designed to avoid. Should the incapacitated or protected person and others with an interest in the proceeding relocate to a different state, the appropriate remedy is to seek transfer of the proceeding to the other state as provided in Section 62-5-715.</p> <p>The exclusive and continuing jurisdiction conferred by this section only applies to guardianship orders made and protective orders issued under Section 62-5-707. Orders made under the special jurisdiction conferred by Section 62-5-708 are not exclusive. And as provided in Section 62-5-708(B), the jurisdiction of a court in a state other than the home state to appoint a guardian in an emergency is subject to the right of a court in the home state to request that the proceeding be dismissed and any appointment terminated.</p>

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<p><b>SECTION 62-5-710.</b> Declining jurisdiction; more appropriate forum; dismissal or stay of proceeding.</p> <p>(A) The court having jurisdiction pursuant to Section 62-5-707 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.</p> <p>(B) If the court declines to exercise its jurisdiction pursuant to subsection (A), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.</p> <p>(C) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:</p> <ol style="list-style-type: none"> <li>(1) the expressed preference of the respondent;</li> <li>(2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;</li> <li>(3) the length of time the respondent was physically present in or was a legal resident of this or another state;</li> <li>(4) the distance of the respondent from the court in each state;</li> <li>(5) the financial circumstances of the respondent's estate;</li> <li>(6) the nature and location of the evidence;</li> <li>(7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;</li> <li>(8) the familiarity of the court of each state with the facts and issues in</li> </ol>	<p>Section 62-5-715 authorizes a guardian or conservator to petition to transfer the proceeding to another state. Upon the conclusion of the transfer, the court in the accepting state will appoint the guardian or conservator as guardian or conservator in the accepting state and the court in the transferring estate will terminate the local proceeding, whereupon the jurisdiction of the transferring court terminates and the court in the accepting state acquires exclusive and continuing jurisdiction as provided in Section 62-5-709.</p> <p><b>SECTION 62-5-710.</b></p> <p>(A) <del>The</del> <u>A</u> court <u>of this State</u> having jurisdiction pursuant to Section 62-5-707 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.</p> <p>(B) If <del>the</del> <u>a</u> court <u>of this State</u> declines <del>to exercise its</del> jurisdiction <u>over a guardianship or protective proceeding</u> pursuant to subsection (A), it shall either dismiss <u>the proceeding</u> or stay the proceeding. The court may impose any <u>other</u> condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or <del>issuance of a</del> protective order be <del>filed</del> <u>filed</u> promptly <u>filed</u> in another state.</p> <p>(C) In determining whether it is an appropriate forum, the court shall consider <del>all relevant factors, including:</del></p> <ol style="list-style-type: none"> <li>(1) <del>the</del> <u>any</u> expressed preference of the <u>primary</u> respondent;</li> <li>(2) whether abuse, neglect, or exploitation of the <u>primary</u> respondent has occurred or is likely to occur and which state could best protect the <u>primary</u> respondent from the abuse, neglect, or exploitation;</li> <li>(3) the length of time the <u>primary</u> respondent was physically present in or was a legal resident of this or another state;</li> <li>(4) the distance of the <u>primary</u> respondent from the court in each state;</li> <li>(5) the financial circumstances of the <u>primary</u> respondent's estate;</li> </ol>



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<p>the proceeding; and  (9) if an appointment is made, the court’s ability to monitor the conduct of the guardian or conservator.</p>	<p>(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; <del>and</del>  (9) if an appointment is made, the court’s ability to monitor the conduct of the guardian or conservator; <u>and</u>  (10) <u>any other information as the court deems relevant in evaluating the appropriateness of the forum.</u></p> <p><b>REPORTER’S COMMENTS</b></p> <p>This section authorizes a court otherwise having jurisdiction to decline jurisdiction on the basis that a court in another state is in a better position to make a guardianship or protective order determination. The effect of a declination of jurisdiction under this section is to rearrange the priorities specified in Section 62-5-707. A court of the home state may decline in favor of a court of a significant-connection or other state and a court in a significant-connection state may decline in favor of a court in another significant-connection or other state. The court declining jurisdiction may either dismiss or stay the proceeding. The court may also impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.</p> <p>This section is similar to Section 207 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) except that the factors in subsection (C) of this Act have been adapted to address issues most commonly encountered in adult guardianship and protective proceedings as opposed to child custody determinations.</p> <p>Under Section 62-5-707(2)(b), the factors specified in subsection (C) of this section are to be employed in determining whether a court of a significant-connection state may assume jurisdiction when a petition has not been filed in the primary respondent’s home state or in another significant-connection state. Under Section 62-5-711(1)(B)(2), the court</p>

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<p><b>SECTION 62-5-711.</b> Jurisdiction acquired due to unjustifiable conduct; assessment of reasonable expenses against responsible party.</p> <p>(A) If at any time the court determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:</p> <p>(1) decline to exercise jurisdiction;</p> <p>(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</p> <p>(3) continue to exercise jurisdiction after considering:</p> <p>(a) 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;</p> <p>(b) whether it is a more appropriate forum than the court of any other state pursuant to the factors provided in Section 62-5-710(C); and</p> <p>(c) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 62-5-708.</p> <p>(B) If the court 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’s fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this State or a governmental subdivision, agency, or instrumentality of this State unless authorized by law other than this article.</p>	<p>is to consider these factors in deciding whether it will retain jurisdiction when unjustifiable conduct has occurred.</p> <p><b>SECTION 62-5-711.</b></p> <p>(A) If at any time <del>the a</del> <u>a court of this State</u> determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:</p> <p>(1) decline to exercise jurisdiction;</p> <p>(2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the <u>primary</u> respondent or the protection of the <u>primary</u> 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 <del>issuance of a</del> protective order is filed in a court of another state having jurisdiction; or</p> <p>(3) continue to exercise jurisdiction after considering:</p> <p>(a) the extent to which the <u>primary</u> respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court’s jurisdiction;</p> <p>(b) whether it is a more appropriate forum than the court of any other state pursuant to the factors <del>provided</del> <u>set forth</u> in Section 62-5-710(C); and</p> <p>(c) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section <del>62-5-708</del> <u>62-5-707</u>.</p> <p>(B) If <del>the a</del> <u>a court of this State</u> 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’s fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this State or</p>

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	<p>a governmental subdivision, agency, or instrumentality of this State unless authorized by law other than this <del>article</del> <u>part</u>.</p> <p><b>REPORTER’S COMMENTS</b></p> <p>This section is similar to the Section 208 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Like the UCCJEA, this Act does not attempt to define ‘unjustifiable conduct,’ concluding that this issue is best left to the courts. However, a common example could include the unauthorized removal of an adult to another state, with that state acquiring emergency jurisdiction under Section 62-5-708 immediately upon the move and home state jurisdiction under Section 62-5-707 six months following the move if a petition for a guardianship or protective order is not filed during the interim in the soon-to-be former home state. Although child custody cases frequently raise different issues than do adult guardianship matters, the element of unauthorized removal is encountered in both types of proceedings. For the caselaw on unjustifiable conduct under the predecessor Uniform Child Custody Jurisdiction Act (1968), see David Carl Minneman, Parties’ Misconduct as Grounds for Declining Jurisdiction Under §8 of the Uniform Child Custody Jurisdiction Act (UCCJA), 16 A.L.R. 5th 650 (1993).</p> <p>Subsection (A) gives the court authority to fashion an appropriate remedy when it has acquired jurisdiction because of unjustifiable conduct. The court may decline to exercise jurisdiction; exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the primary respondent or the protection of the primary respondent’s property or prevent a repetition of the unjustifiable conduct; or continue to exercise jurisdiction after considering several specified factors. Under subsection (A), the unjustifiable conduct need not have been committed by a party.</p> <p>Subsection (B) authorizes a court to assess costs and expenses, including attorney’s fees, against a party whose unjustifiable conduct caused the court to acquire jurisdiction. Subsection (B) applies only if the unjustifiable conduct was committed by a party and allows for costs</p>

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<p><b>SECTION 62-5-712.</b> Notice requirements to respondent’s home state.</p> <p>If a petition for the appointment of a guardian or issuance of a protective order is brought in this State and this State was not the respondent’s home state on the date the petition was filed, in addition to complying with the notice requirements of this State, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent’s home state. The notice must be given in the same manner as notice is required to be given in this State.</p> <p><b>SECTION 62-5-713.</b> Rules for dealing with conflicting petitions in this and another state.</p>	<p>and expenses to be assessed only against that party. Similar to Section 208 of the UCCJEA, the court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of the state unless authorized by other law.</p> <p><b>SECTION 62-5-712.</b></p> <p>If a petition for the appointment of a guardian or issuance of a protective order is brought in this State and this State was not the <u>primary</u> respondent’s home state on the date <del>the</del> <u>a petition for the appointment of a guardian or protective order</u> was filed, <u>or within six months before the date the petition was filed</u>, in addition to complying with the notice requirements of this State, notice of the <u>petition proceeding</u> must be given <u>by the petitioner</u> to those persons who would be entitled to notice of the petition if <u>a the</u> proceeding were brought in the <u>primary</u> respondent’s home state, <u>if any</u>. The notice must be given in the same manner as notice is <del>required to be</del> given in this State.</p> <p><b>REPORTER’S COMMENTS</b></p> <p>While this Act tries not to interfere with a state’s underlying substantive law on guardianship and protective proceedings, the issue of notice is fundamental. Under this section, when a proceeding is brought other than in the primary respondent’s home state, the petitioner must give notice in the method provided under local law not only to those entitled to notice under local law but also to the persons required to be notified were the proceeding brought in the primary respondent’s home state. Frequently, the respective lists of persons to be notified will be the same. But where the lists are different, notice under this section will assure that someone with a right to assert that the home state has a primary right to jurisdiction will have the opportunity to make that assertion</p> <p><b>SECTION 62-5-713.</b></p>

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<p>Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this State pursuant to Section 62-5-708(A)(1) or (2), if a petition for the appointment of a guardian or issuance of a protective order is filed in this State and in another state and neither petition has been dismissed or withdrawn, the following rules apply:</p> <p>(1) if the court has jurisdiction pursuant to Section 62-5-707, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to Section 62-5-707 before the appointment or issuance of the order.</p> <p>(2) if the court does not have jurisdiction pursuant to Section 62-5-707, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this State shall dismiss the petition unless the court in the other state determines that the court in this State is a more appropriate forum.</p>	<p>Except for a petition for the appointment of a guardian in an emergency or <del>issuance of</del> a protective order limited to property located in this State pursuant to Section 62-5-708(A)(1) or (2), if a <u>summons and</u> petition for the appointment of a guardian or <del>issuance of</del> a protective order is filed <u>and served in this and another state</u> and <del>in another state and</del> neither petition has been dismissed or withdrawn, the following rules apply:</p> <p>(1) if the court <u>in this State</u> has jurisdiction pursuant to Section 62-5-707, it may proceed with the case unless a court in another state acquires jurisdiction under <del>provisions similar to</del> Section 62-5-707 before the appointment or issuance of the order.</p> <p>(2) if the court <u>in this State</u> does not have jurisdiction pursuant to Section 62-5-707, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state <u>has jurisdiction, does not determine that</u> the court in this State <del>shall dismiss the petition unless the court in the other state determines that the court in this State is a more appropriate forum,</del> <u>the court in this State shall dismiss the petition.</u></p> <p><b>REPORTER'S COMMENTS</b></p> <p>Similar to Section 206 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), this section addresses the issue of which court has the right to proceed when proceedings for the same primary respondent are brought in more than one state. The provisions of this section, however, have been tailored to the needs of adult guardianship and protective proceedings and the particular jurisdictional provisions of this Act. Emergency guardianship appointments and protective proceedings with respect to property in other states (Sections 62-5-708(A)(1) and (A)(2)) are excluded from this section because the need for dual appointments is frequent in these cases; for example, a petition will be brought in the primary respondent's home state but emergency action will be necessary in the place where the primary respondent is temporarily located, or a petition for the appointment of a conservator will be brought in the primary respondent's home state but</p>

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<p><b>SECTION 62-5-714.</b> Petition to transfer guardianship or conservatorship to another state; notice; hearing; provisional and final orders.</p>	<p>real estate located in some other state needs to be brought under management.</p> <p>Under the Act only one court in which a petition is pending will have jurisdiction under Section 62-5-707. If a petition is brought in the primary respondent's home state, that court has jurisdiction over that of any significant-connection or other state. If the petition is first brought in a significant-connection state, that jurisdiction will be lost if a petition is later brought in the home state prior to an appointment or issuance of an order in the significant-connection state. Jurisdiction will also be lost in the significant-connection state if the primary respondent has a home state and an objection is filed in the significant-connection state that jurisdiction is properly in the home state. If petitions are brought in two significant-connection states, the first state has a right to proceed over that of the second state, and if a petition is brought in any other state, any claim to jurisdiction of that state is subordinate to that of the home state and all significant-connection states.</p> <p>Under this section, if the court has jurisdiction under Section 62-5-707, it has the right to proceed unless a court of another state acquires jurisdiction prior to the first court making an appointment or issuing a protective order. If the court does not have jurisdiction under Section 62-5-707, it must defer to the court with jurisdiction unless that court determines that the court in this state is the more appropriate forum and it thereby acquires jurisdiction. While the rules are straightforward, factual issues can arise as to which state is the home state or significant-connection state. Consequently, while under Section 62-5-707 there will almost always be a court having jurisdiction to proceed, reliance on the communication, court cooperation, and evidence gathering provisions of Sections 62-5-704 through 62-5-706 will sometimes be necessary to determine which court that might be.</p> <p><b>SECTION 62-5-714.</b></p> <p><del>(A) A guardian or conservator appointed in this State may petition the</del></p>

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	<p><del>court to transfer the guardianship or conservatorship to another state.</del></p> <p><del>(B) Notice of a petition pursuant to subsection (A) must be given to the persons that would be entitled to notice of a petition in this State for the appointment of a guardian or conservator.</del></p> <p><del>(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 subsection (A), except that no hearing shall be required if a consent order is signed by all parties who have pled, defended, or otherwise participated in the proceeding, as provided by the South Carolina Rules of Civil Procedure.</del></p> <p><del>(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:</del></p> <p><del>(1) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;</del></p> <p><del>(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</del></p> <p><del>(3) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.</del></p> <p><del>(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:</del></p> <p><del>(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 provided in Section 62-5-707(2)(b);</del></p> <p><del>(2) an objection to the transfer has not been made or, if an</del></p>

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<p>(A) A guardian or conservator appointed in this State may petition the court to transfer the guardianship or conservatorship to another state.</p> <p>(B) Notice of a petition pursuant to subsection (A) must be given to the persons that would be entitled to notice of a petition in this State for the appointment of a guardian or conservator.</p> <p>(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 subsection (A), except that no hearing shall be required if a consent order is signed by all parties who have pled, defended, or otherwise participated in the proceeding, as provided by the South Carolina Rules of Civil Procedure.</p> <p>(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:</p> <p>(1) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;</p> <p>(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</p> <p>(3) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.</p>	<p><del>objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and</del></p> <p><del>(3) adequate arrangements will be made for management of the protected person’s property.</del></p> <p><del>(F) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:</del></p> <p><del>(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 62-5-715; and</del></p> <p><del>(2) the documents required to terminate a guardianship or conservatorship in this State.</del></p> <p><u>(1) Following the appointment of a guardian or conservator, the guardian or conservator may petition the court to transfer the guardianship or conservatorship to another state.</u></p> <p><u>(2) Notice of the petition pursuant to subsection (1) must be given by the petitioner to those persons that would be entitled to notice of a petition in this State for the appointment of a guardian or conservator.</u></p> <p><u>(3) 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 subsection (1); except that no hearing shall be required if a consent order is signed by all parties who have pled, defended or otherwise participated in the proceeding, as provided by the South Carolina Rules of Civil Procedure.</u></p> <p><u>(4) The court shall issue a provisional order 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:</u></p> <p><u>(a) the incapacitated person is physically located in or is reasonably expected to move permanently to the other state;</u></p> <p><u>(b) 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;</u></p>



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<p>(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:</p> <p>(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 provided in Section 62-5-707(2)(b);</p> <p>(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</p> <p>(3) adequate arrangements will be made for management of the protected person’s property.</p> <p>(F) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:</p> <p>(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 62-5-715; and</p> <p>(2) the documents required to terminate a guardianship or conservatorship in this State.</p> <p><b>SECTION 62-5-715.</b> Confirmation of transfer from another state; petition to accept guardianship or conservatorship; notice; hearing; provisional and final orders; determination of needed modification.</p>	<p><u>and</u></p> <p><u>(c) the court is satisfied that plans for care and services for the incapacitated person in the other state are reasonable and sufficient.</u></p> <p><u>(5) 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:</u></p> <p><u>(a) the protected person is physically located 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 set forth in Section 62-5-101(21);</u></p> <p><u>(b) 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</u></p> <p><u>(c) the court is satisfied that adequate arrangements will be made for management of the protected person’s property.</u></p> <p><u>(6) Upon receipt from the court of the other state of a provisional order issued under provisions similar to Section 62-5-715 to accept a guardianship or conservatorship transferred under this section and the filing of the documents required in this state to terminate a guardianship or conservatorship, the court shall issue an order confirming the transfer of the proceeding to the other state and terminating the guardianship or conservatorship in this State.</u></p> <p><b>SECTION 62-5-715.</b></p> <p><del>(A) To confirm transfer of a guardianship or conservatorship transferred to this State under provisions similar to Section 62-5-714, the guardian or conservator must petition the court in this State to accept the guardianship or conservatorship. The petition must include a</del></p>

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	<p>certified copy of the other state's provisional order of transfer.</p> <p>(B) Notice of a petition pursuant to subsection (A) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this State. The notice must be given in the same manner as notice is required to be given in this State.</p> <p>(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 proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (A).</p> <p>(D) The court shall issue an order provisionally granting a petition filed pursuant to subsection (A) unless:</p> <ol style="list-style-type: none"> <li>(1) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or</li> <li>(2) the guardian or conservator is ineligible for appointment in this State.</li> </ol> <p>(E) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this State upon its receipt from the court from which the proceeding is being transferred of a final order issued pursuant to provisions similar to Section 62-5-714 transferring the proceeding to this State.</p> <p>(F) Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the laws of this State.</p> <p>(G) In granting a petition pursuant to this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.</p> <p>(H) The denial by the court of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this State pursuant to another provision of this article if</p>

<b>ARTICLE 5: Part 7- EXISTING CODE LANGUAGE</b>	<b>Bill # S. 1243- Article 5- Part 7</b>
<p>(A) To confirm transfer of a guardianship or conservatorship transferred to this State under provisions similar to Section 62-5-714, the guardian or conservator must petition the court in this State to accept the guardianship or conservatorship. The petition must include a certified copy of the other state’s provisional order of transfer.</p> <p>(B) Notice of a petition pursuant to subsection (A) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this State. The notice must be given in the same manner as notice is required to be given in this State.</p> <p>(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 proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (A).</p> <p>(D) The court shall issue an order provisionally granting a petition filed pursuant to subsection (A) unless:</p> <p>(1) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or</p> <p>(2) the guardian or conservator is ineligible for appointment in this State.</p> <p>(E) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this State upon its receipt from the court from which the proceeding is being transferred of a final order issued pursuant to provisions similar to Section 62-5-714 transferring the proceeding to this State.</p> <p>(F) Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine</p>	<p><del>the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.</del></p> <p><u>(1) Upon issuance of a provisional order in another state to transfer a guardianship or conservatorship to this State under procedures similar to those in Section 62-5-714, the guardian or conservator shall petition the court in this State to accept the guardianship or conservatorship. The petition must include a certified copy of the other state’s provisional order.</u></p> <p><u>(2) Notice of a petition under subsection (1) to accept a guardianship or conservatorship from another state must be given by the petitioner to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this State. The notice must be given in the same manner as notice is given in this State.</u></p> <p><u>(3) 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 proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (1) to accept a guardianship or conservatorship from another state, except that no hearing shall be required if a consent order is signed by all parties who have pled or otherwise defended as provided by the South Carolina Rules of Civil Procedure.</u></p> <p><u>(4) The court shall issue a provisional order approving a petition filed under subsection (1) unless:</u></p> <p><u>(a) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or</u></p> <p><u>(b) the guardian or conservator is ineligible for appointment in this State.</u></p> <p><u>(5) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this State upon receipt from the court from which the proceeding is being transferred of a final order issued pursuant to provisions similar to Section 62-5-714 transferring the proceeding to this State.</u></p>

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<p>whether the guardianship or conservatorship needs to be modified to conform to the laws of this State.</p> <p>(G) In granting a petition pursuant to this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person’s incapacity and the appointment of the guardian or conservator.</p> <p>(H) The denial by the court of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this State pursuant to another provision of this article if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.</p>	<p><u>(6) Not later than ninety days after the issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the laws of this State.</u></p> <p><u>(7) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other State, including the determination of the incapacitated or protected person’s incapacity and the appointment of the guardian or conservator, if the guardian or conservator is eligible to act in this state.</u></p> <p><u>(8) The denial of a petition filed under subsection (1) to accept a guardianship or conservatorship from another state does not affect the ability of a guardian or conservator appointed by a court in another state to seek appointment as guardian of the incapacitated person or conservator of the protected person under Parts 3 and 4 of this article if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.</u></p> <p><b>REPORTER’S COMMENTS</b></p> <p>Sections 62-5-714 and 62-5-715, are part of one integrated procedure. Section 62-5-714 authorizes a guardian or conservator to petition the court to transfer the guardianship or conservatorship proceeding to a court of another state. Such a transfer is often appropriate when the incapacitated or protected person has moved or has been placed in a facility in another state, making it impossible for the original court to adequately monitor the proceeding. Section 62-5-714 authorizes a transfer of a guardianship, a conservatorship, or both. There is no requirement that both categories of proceeding be administered in the same state.</p> <p>Section 62-5-714 addresses procedures in the transferring state. Section 62-5-715 addresses procedures in the accepting state.</p> <p>A transfer begins with the filing of a petition by the guardian or conservator as provided in Section 62-5-714(1). Notice of this petition must be given to the persons who would be entitled to notice were the petition a petition for an original appointment. Section 62-5-714(2). A</p>

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	<p>hearing on the petition is required if requested or on the court’s own motion, unless all necessary parties have consented . Assuming the court in the transferring state is satisfied that the grounds for transfer stated in Section 62-5-714(4) (guardianship) or 62-5-714(5) (conservatorship) have been met, one of which is that the court is satisfied that the court in the other state will accept the case, the court must issue a provisional order approving the transfer. The transferring court will not issue a final order dismissing the case until, as provided in Section 62-5-714(6), it receives a copy of the provisional order from the accepting court accepting the transferred proceeding.</p> <p>Following issuance of the provisional order by the transferring court, a petition must be filed in the accepting court as provided in Section 62-5-715(1). Notice of that petition must be given to those who would be entitled to notice of an original petition for appointment in both the transferring state and in the accepting state. Section 62-5-715(2). A hearing must be held if requested or on the court’s own motion, unless all necessary parties have consented. Section 62-5-715(3). The court must issue a provisional order accepting the case unless it is established that the transfer would be contrary to the incapacitated or protected person’s interests or the guardian or conservator is ineligible for appointment in the accepting state. Section 62-5-715(4). The term ‘interests’ as opposed to ‘best interests’ was chosen because of the strong autonomy values in modern guardianship law. Should the court decline the transfer petition, it may consider a separately brought petition for the appointment of a guardian or issuance of a protective order only if the court has a basis for jurisdiction under Sections 62-5-707 or 62-5-708 other than by reason of the provisional order of transfer. Section 62-5-715(8).</p> <p>The final steps are largely ministerial. Pursuant to Section 62-5-714(6), the provisional order from the accepting court must be filed in the transferring court. The transferring court will then issue a final order terminating the proceeding, subject to local requirements such as filing of a final report or account and the release of any bond. Pursuant to Section 62-5-715(5), the final order terminating the</p>

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	<p>proceeding in the transferring court must then be filed in the accepting court, which will then convert its provisional order accepting the case into a final order appointing the petitioning guardian or conservator as guardian or conservator in the accepting state.</p> <p>Because guardianship and conservatorship law and practice will likely differ between the two states, the court in the accepting state must within 90 days after issuance of a final order determine whether the guardianship or conservatorship needs to be modified to conform to the law of the accepting state. Section 62-5-715(6). The drafters specifically did not try to design the procedures in Sections 62-5-714 and 62-5-715 for the difficult problems that can arise in connection with a transfer when the guardian or conservator is ineligible to act in the second state, a circumstance that can occur when a financial institution is acting as conservator or a government agency is acting as guardian. Rather, the procedures in Sections 62-5-714 and 62-5-715 are designed for the typical case where the guardian or conservator is legally eligible to act in the second state. Should that particular guardian or conservator not be the best person to act in the accepting state, a change of guardian or conservator can be initiated once the transfer has been secured.</p> <p>The transfer procedure in this article responds to numerous problems that have arisen in connection with attempted transfers under the existing law of most states. Sometimes a court will dismiss a case on the assumption a proceeding will be brought in another state, but such proceeding is never filed. Sometimes a court will refuse to dismiss a case until the court in the other state accepts the matter, but the court in the other state refuses to consider the petition until the already existing guardianship or conservatorship has been terminated. Oftentimes the court will conclude that it is without jurisdiction to make an appointment until the primary respondent is physically present in the state, a problem which Section 62-5-708(A)(3) addresses by granting a court special jurisdiction to consider a petition to accept a proceeding from another state. But the most serious problem is the need to prove the case in the second state from scratch, including proving the primary respondent's incapacity and the choice of guardian or conservator.</p>

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<p><b>SECTION 62-5-716.</b> Registration of orders from another state; powers in this state.</p> <p>(A) If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this State, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this State by filing as a foreign judgment in a court, in any appropriate county of this State, certified copies of the order and letters of office.</p>	<p>Sections 62-5-714 and 62-5-715 eliminate this problem. Section 62-5-715(7) requires that the court accepting the case recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person’s incapacity and the appointment of the guardian or conservator, if otherwise eligible to act in the accepting state.</p> <p><b>SECTION 62-5-716.</b></p> <p><del>(A)</del> If a guardian has <u>not</u> been appointed in <del>another</del> <u>this</u> State and a petition for the appointment of a guardian is not pending in this State, <del>the a</del> guardian appointed in <del>the other</del> <u>another</u> state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this State by filing as a <u>foreign judgment in a court</u>, in any appropriate county of this State; <u>a certified copies copy of the order and letters of office in the register of deeds and also filing a clocked copy of the letters of office and a certified copy of the order of appointment in the probate court.</u></p> <p><del>(B)</del> If a conservator has been appointed in another state and a petition for a protective order is not pending in this State, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this State by filing as a foreign judgment in a court of this State, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.</p> <p><del>(C)(1)</del> Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this State all powers authorized in the order of appointment except as prohibited under the laws of this State, including maintaining actions and proceedings in this State and, if the guardian or conservator is not a resident of this State, subject to any conditions imposed upon nonresident parties.</p> <p><del>(2)</del> A probate court of this State may grant any relief available</p>

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<p>(B) If a conservator has been appointed in another state and a petition for a protective order is not pending in this State, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this State by filing as a foreign judgment in a court of this State, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.</p> <p>(C)(1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this State all powers authorized in the order of appointment except as prohibited under the laws of this State, including maintaining actions and proceedings in this State and, if the guardian or conservator is not a resident of this State, subject to any conditions imposed upon nonresident parties.</p> <p>(2) A probate court of this State may grant any relief available pursuant to the provisions of this article and other laws of this State to enforce a registered order.</p>	<p><del>pursuant to the provisions of this article and other laws of this State to enforce a registered order.</del></p> <p><b><u>SECTION 62-5-717.</u></b></p> <p><u>If a conservator has not been appointed in this State and a petition for a protective order is not pending in this State, a conservator appointed in another state, after giving notice to the appointing court of an intent to register, may register the protective order in this State by filing in any appropriate county of this State a certified copy of the letters of office in the register of deeds and also filing a clocked copy of the letters of office, a certified copy of the order, and any bond in the probate court.</u></p> <p><b><u>SECTION 62-5-718.</u></b></p> <p><u>Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this State all powers authorized in the order of appointment except as prohibited under the laws of this State, including maintaining actions and proceedings in this State and, if the guardian or conservator is not a resident of this State, subject to any conditions imposed upon nonresident parties.</u></p> <p><u>A court of this State may grant any relief available under this part and other law of this State to enforce a registered order.</u></p> <p><b>REPORTER'S COMMENTS</b></p> <p>Sections 62-5-716 through 62-5-718 are designed to facilitate the enforcement of guardianship and protective orders in other states. These</p>



<p><b>ARTICLE 5: Part 7- EXISTING CODE LANGUAGE</b></p>	<p><b>Bill # S. 1243- Article 5- Part 7</b></p>
	<p>sections do not make distinctions among the types of orders that can be enforced. These sections are applicable whether the guardianship or conservatorship is full or limited. While some states have expedited procedures for sales of real estate by conservators appointed in other states, few states have enacted statutes dealing with enforcement of guardianship orders, such as when a care facility questions the authority of a guardian appointed in another state. Sometimes, these sorts of refusals necessitate that the proceeding be transferred to the other state or that an entirely new petition be filed, problems that could often be avoided if guardianship and protective orders were entitled to recognition in other states.</p> <p>These sections provides for such recognition. The key concept is registration. Section 62-5-716 provides for registration of guardianship orders, and Section 62-5-717 for registration of protective orders. Following registration of the order in the appropriate county of the other state, and after giving notice to the appointing court of the intent to register the order in the other state, Section 62-5-718 authorizes the guardian or conservator to thereafter exercise all powers authorized in the order of appointment except as prohibited under the laws of the registering state.</p> <p>These sections conclude that the registration of certified copies provides sufficient protection and that it is not necessary to mandate the filing of authenticated copies.</p>