~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

April 20, 2010

**S. 1070**

Introduced by Senator Hayes

S. Printed 4/20/10--S. [SEC 4/21/10 5:19 PM]

Read the first time January 20, 2010.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING PART VII TO ARTICLE 5, TITLE 62 SO AS TO ENACT THE “UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT”, TO DEFINE NECESSARY TERMS, PROVIDE A UNIFORM PROCEDURE FOR JURISDICTION OVER ADULT GUARDIANSHIPS, CONSERVATORSHIPS, AND OTHER PROTECTIVE PROCEEDINGS TO ENSURE ONLY ONE STATE HAS JURISDICTION AT A GIVEN TIME.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 5, Title 62 of the 1976 Code is amended by adding:

“PART VII

~~Uniform~~ South Carolina Adult Guardianship and Protective Proceedings Jurisdiction Act

Section 62‑5‑700. This act may be cited as the ‘~~Uniform~~ South Carolina Adult Guardianship and Protective Proceedings Jurisdiction Act’.

Section 62‑5‑701. 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.

Section 62‑5‑702. As used in this part, the term:

(1) ‘Adult’ means an individual who has attained eighteen years of age or who has been emancipated by a court of competent jurisdiction.

(2) ‘Conservator’ ~~is a ‘guardian of the property’ as that term is used in this article~~ means a person appointed by a court to manage an estate of a protected person.

(3) ‘Court’ means ~~the~~ a Probate Court in this State or a court in another state with the same jurisdiction as a probate court in this State.

(4) ‘Emergency’ means ~~the respondent is in danger of incurring imminent serious physical harm or substantial economic loss or expense~~ circumstances that will likely result in substantial harm to a respondent’s health, safety, or welfare or substantial economic loss or expense.

(5) ‘Guardian’ means a person ~~appointed by the court to make decisions regarding another person as that term is used in this article~~ 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.

(6) ‘Guardianship order’ means an order appointing a guardian.

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

(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.

(9) ‘Incapacitated person’ means an adult for whom a guardian or conservator has been appointed.

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

(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.

(12) ‘Protected person’ means an adult for whom a protective order has been issued.

(13) ‘Protective order’ means an order appointing a ~~‘guardian of the property’ as that term is used in this article~~ conservator or a court order relating to the management of property of an incapacitated person.

(14) ‘Protective proceeding’ means a judicial proceeding in which a protective order is sought or has been issued.

(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.

(16) ‘Respondent’ means an adult for whom a protective order or the appointment of a guardian is sought.

(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:

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

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

(c) location of the respondent’s property; and

(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.

(18) ‘State’ means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally 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.

Section 62‑5‑703. The court may treat a foreign country as if it were a state for the purpose of applying this part.

Section 62‑5‑704. (A) The court may communicate with a court in another state concerning a proceeding arising pursuant to this article. The court ~~may~~ shall allow the parties to participate in ~~the communication~~ 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 ~~The~~ record may be limited to the fact that the communication occurred.

(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.

Section 62‑5‑705. (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 following:

(1) hold an evidentiary hearing;

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

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

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

(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);

(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

(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. § 164.504.

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

Section 62‑5‑706. (A) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

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

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

Section 62‑5‑707. The court has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) this State is the respondent’s home state;

(2) on the date the petition is filed, this State is a significant‑connection state; and

(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

(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 significant‑connection state and, before the court makes the appointment or issues the order:

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

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

(iii) the court concludes that it is an appropriate forum pursuant to the factors provided in Section 62‑5‑710(C);

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

(4) the requirements for special jurisdiction pursuant to Section 62‑5‑708 are met.

Section 62‑5‑708. (A) The court lacking jurisdiction pursuant to Section 62‑5‑707(1) through (3) has special jurisdiction to do any of the following:

(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;

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

(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.

(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 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.

Section 62‑5‑709. 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 its own terms.

Section 62‑5‑710. (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.

(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.

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

(1) the expressed preference of the respondent;

(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;

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

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

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

(6) the nature and location of the evidence;

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

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

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

Section 62‑5‑711. (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:

(1) decline to exercise jurisdiction;

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

(3) continue to exercise jurisdiction after considering:

(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;

(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

(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.

(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.

Section 62‑5‑712. 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.

Section 62‑5‑713. 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:

(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.

(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.

Section 62‑5‑714. (A) A guardian or conservator appointed in this State may petition the court to transfer the guardianship or conservatorship to another state.

(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.

(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.

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

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

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

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

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

(1) the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors provided in Section 62‑5‑707(2)(b);

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

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

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

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to Section 62‑5‑715; and

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

Section 62‑5‑715. (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.

(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.

(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).

(D) The court shall issue an order provisionally granting a petition filed pursuant to subsection (A) unless:

(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

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

(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.

(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 law of this State.

(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.

(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.

Section 62‑5‑716. ~~The authority of a guardian or conservator appointed in another state to act in this State is governed by the provisions of Section 62‑5‑432~~ (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.

(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.

(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.

(2) A probate court of this State may grant any relief available pursuant to the provisions of this article and other law of this State to enforce a registered order.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date.

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