

ACT 236

S.B. NO. 2318

A Bill for an Act Relating to Adult Guardianship and Protective Proceedings
Jurisdiction.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE
PROCEEDINGS JURISDICTION ACT**

PART I. GENERAL PROVISIONS

§ -1 Short title. This chapter may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ -2 Definitions. When used in this chapter, unless the context requires otherwise:

“Adult” means an individual who has attained eighteen years of age.

“Conservator” means a person appointed by the court to administer the property of an adult, including a person appointed under chapter 551 or 560.

“Guardian” means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under chapter 551 or 560.

“Guardianship order” means an order appointing a guardian.

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

“Incapacitated person” means an adult for whom a guardian has been appointed.

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

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

“Protected person” means an adult for whom a protective order has been issued.

“Protective order” means an order appointing a conservator or other order related to management of an adult’s property.

“Protective proceeding” means a judicial proceeding in which a protective order is sought or has been issued.

“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.

“Respondent” means an adult for whom a protective order or the appointment of a guardian is sought.

“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 any territory or insular possession subject to the jurisdiction of the United States.

§ -3 International application. A court of the State of Hawaii may treat a foreign country as if it were a state for the purpose of applying this part and parts II, III, and IV.

§ -4 Communication between courts. (a) A court of the State of Hawaii may communicate with a court in another state concerning a proceeding arising under this chapter. Either court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b), the court

shall make a record of the communication. 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.

§ -5 Cooperation between courts. (a) In a guardianship or protective proceeding in the State of Hawaii, 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 the other 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 any appropriate investigation of a person involved in a proceeding;
- (5) Forward to the court of the State of Hawaii a certified copy of the transcript or other record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise produced under paragraph (2), and any evaluation or assessment prepared in compliance with an order under paragraph (3) or (4);
- (6) Issue any 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; or
- (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 Code of Federal Regulations section 160.103, as amended.

(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), a court of the State of Hawaii has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

§ -6 Taking testimony in another state. (a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in the State of Hawaii 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 of the State of Hawaii may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of the State of Hawaii 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 the State of Hawaii by technological means that do not produce an original writing may not be excluded from evidence on an objection based on Rule 1002 of the Hawaii Rules of Evidence.

PART II. JURISDICTION

§ -7 Definitions; significant factors. (a) For purposes of this part: “Emergency” means a circumstance that likely will result in substantial harm to a respondent’s health, safety, or welfare, and for which the appointment

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

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

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

(b) In determining under sections -9 and -16(e) whether a respondent has a significant connection with a particular state, the court shall consider:

- (1) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;
- (2) The length of time the respondent at any time was physically present in the state and the duration of any absence;
- (3) The location of the respondent's property; and
- (4) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

§ -8 **Exclusive basis.** This part provides the exclusive jurisdictional basis for a court of the State of Hawaii to appoint a guardian or issue a protective order for an adult.

§ -9 **Jurisdiction.** A court of the State of Hawaii has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

- (1) The State of Hawaii is the respondent's home state;
- (2) On the date the petition is filed, the State of Hawaii is considered to be 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 the State of Hawaii 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 of the State of Hawaii concludes that it is an appropriate forum under the factors set forth in section -12;
- (3) The State of Hawaii does not have jurisdiction under either paragraph (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because forum and jurisdiction is more appropriate in the State of Hawaii and would be consistent with the United States Constitution and Hawaii state constitution; or

- (4) The requirements for special jurisdiction under section -10 are met.

§ -10 Special jurisdiction. (a) A court of the State of Hawaii, while lacking jurisdiction under section -9(1) through (3), shall have special jurisdiction to do any of the following:

- (1) Appoint a guardian in an emergency for a term not exceeding ninety days for a respondent who is physically present in the State of Hawaii;
- (2) Issue a protective order with respect to real or tangible personal property located in the State of Hawaii; or
- (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 under procedures similar to section -16.

(b) If a petition for the appointment of a guardian in an emergency is brought in the State of Hawaii and the State of Hawaii 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.

§ -11 Exclusive and continuing jurisdiction. Except as otherwise provided in section -10, a court that has appointed a guardian or issued a protective order consistent with this chapter 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.

§ -12 Appropriate forum. (a) A court of the State of Hawaii having jurisdiction under section -9 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 a court of the State of Hawaii declines to exercise its jurisdiction under 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) Any 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 a state;
- (4) The distance of the respondent from the court in each state;
- (5) The financial circumstances of the respondent's estate;
- (6) The nature and location of the evidence;
- (7) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- (8) The familiarity of the court of each state with the facts and issues in the proceeding; and
- (9) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

§ -13 **Jurisdiction declined by reason of conduct.** (a) If at any time a court of the State of Hawaii 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 under the factors set forth in section -12(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 -9.

(b) If a court of the State of Hawaii 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 the State of Hawaii or a governmental subdivision, agency, or instrumentality of the State of Hawaii unless authorized by law other than this chapter.

§ -14 **Notice of proceeding.** If a petition for the appointment of a guardian or issuance of a protective order is brought in the State of Hawaii and it was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of the State of Hawaii, notice of the petition shall 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 shall be given in the same manner as notice is required to be given in the State of Hawaii.

§ -15 **Proceedings in more than one state.** Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in the State of Hawaii under section -10(a)(1) or (a)(2), if a petition for the appointment of a guardian or issuance of a protective order is filed in the State of Hawaii and in another state and neither petition has been dismissed or withdrawn, the following rules shall apply:

- (1) If the court of the State of Hawaii has jurisdiction under section -9, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section -9 before the appointment or issuance of the order; and
- (2) If the court of the State of Hawaii does not have jurisdiction under section -9, 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 of the State of

Hawaii shall dismiss the petition unless the court in the other state determines that the court of the State of Hawaii is a more appropriate forum.

PART III. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

§ -16 Transfer of guardianship or conservatorship to another state. (a) A guardian or conservator appointed in the State of Hawaii may petition the court to transfer the guardianship or conservatorship to another state.

(b) Notice of a petition under subsection (a) shall be given to the persons that would be entitled to notice of a petition in the State of Hawaii 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).

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

- (1) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;
- (2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and
- (3) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

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

- (1) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in section -7(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 from the court to which the proceeding is to be transferred that accepts the proceeding and is issued under provisions similar to section -17; and
- (2) The documents required to terminate a guardianship or conservatorship in the State of Hawaii.

§ -17 Accepting guardianship or conservatorship transferred from another state. (a) To confirm transfer of a guardianship or conservatorship transferred to the State of Hawaii under provisions similar to section -16, the guardian or conservator shall petition the court of the State of Hawaii to accept the guardianship or conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subsection (a) shall 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 the transferring state and the State of Hawaii. The notice shall be given in the same manner as notice is required to be given in the State of Hawaii.

(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 under 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 the State of Hawaii.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in the State of Hawaii upon its receipt of a final order, issued under provisions similar to section -16, from the court where the proceeding is being transferred from.

(f) No 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 the State of Hawaii.

(g) 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.

(h) The denial by a court of the State of Hawaii 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 the State of Hawaii under chapter 551 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

PART IV. REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

§ -18 Registration of guardianship orders. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in the State of Hawaii, 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 the State of Hawaii by filing as a foreign judgment in a court, in any appropriate judicial circuit of the State of Hawaii, certified copies of the order and letters of office.

§ -19 Registration of protective orders. If a conservator has been appointed in another state and a petition for a protective order is not pending in the State of Hawaii, 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 the State of Hawaii by filing as a foreign judgment in a court of the State of Hawaii, in any judicial circuit in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

§ -20 Effect of registration. (a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in the State of Hawaii all powers authorized in the order of appointment except as prohibited under the laws of the State of Hawaii, including maintaining actions and proceedings in the State of Hawaii and, if the guardian or conservator is not a resident of Hawaii, subject to any conditions imposed upon nonresident parties.

(b) A court of the State of Hawaii may grant any relief available under this chapter and other law of the State of Hawaii to enforce a registered order.

PART V. MISCELLANEOUS PROVISIONS

§ -21 Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ -22 Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, title 15 United States Code section 7001, et seq., but does not modify, limit, or supersede section 101(c) of that Act, title 15 United States Code section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, title 15 United States Code section 7003(b).”

SECTION 2. This Act shall apply to guardianship and protective proceedings begun on or after the effective date of this Act; provided that the new parts I, III, and IV and sections -21 and -22 established by section 1 of this Act shall apply to proceedings begun before the effective date of this Act, regardless of whether a guardianship or protective order has been issued.

SECTION 3. This Act shall take effect on September 1, 2014.

(Approved July 6, 2012.)