

SECOND REGULAR SESSION

HOUSE BILL NO. 2105

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES COOPER (155) (Sponsor), STEVENSON,
HUNTER AND COOPER (120) (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

4859L.02I

AN ACT

To amend chapter 475, RSMo, by adding thereto twenty-three new sections relating to the uniform adult guardianship and protective proceedings jurisdiction act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 475, RSMo, is amended by adding thereto twenty-three new sections,
2 to be known as sections 475.501, 475.502, 475.503, 475.504, 475.505, 475.506, 475.521,
3 475.522, 475.523, 475.524, 475.525, 475.526, 475.527, 475.528, 475.529, 475.531, 475.532,
4 475.541, 475.542, 475.543, 475.551, 475.552, and 475.555, to read as follows:

ARTICLE 1

GENERAL PROVISIONS

475.501. SHORT TITLE. Sections 475.501 to 475.555 may be cited as the
2 "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act".

475.502. DEFINITIONS. In Sections 475.501 to 475.555:

- 2 (1) "Adult" means an individual who has attained eighteen years of age.
3 (2) "Conservator" means a person appointed by the court to administer the
4 property of an adult, including a person appointed under this chapter.
5 (3) "Guardian" means a person appointed by the court to make decisions regarding
6 the person of an adult, including a person appointed under this chapter.
7 (4) "Guardianship order" means an order appointing a guardian.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

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

18 (9) "Protected person" means an adult for whom a protective order has been made.

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

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

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

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

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

475.503. INTERNATIONAL APPLICATION OF SECTIONS 475.501 TO 475.555.

2 A court of this state may treat a foreign country as if it were a state for the purpose of
3 applying this Article and Articles 2, 3, and 5.

475.504. COMMUNICATION BETWEEN COURTS.

2 (a) A court of this state may communicate with a court in another state concerning
3 a proceeding arising under Sections 475.501 to 475.555. The court may allow the parties
4 to participate in the communication. Except as otherwise provided in subsection (b), the
5 court shall make a record of the communication. The record may be limited to the fact
6 that the communication occurred.

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

475.505. COOPERATION BETWEEN COURTS.

2 (a) In a guardianship or protective proceeding in this state, a court of this state may
3 request the appropriate court of another state to:

4 (1) hold an evidentiary hearing;

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

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

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

9 (5) forward to the court of this state a certified copy of the transcript or other
10 record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise
11 presented under paragraph (2), and any evaluation or assessment prepared in compliance
12 with the request under paragraph (3) or (4);

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

16 (7) issue an order authorizing the release of medical, financial, criminal, or other
17 relevant information in that state, including protected health information as defined in 45
18 Code of Federal Regulations Section 164.504 , as amended.

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

475.506. TAKING TESTIMONY IN ANOTHER STATE.

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

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

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

ARTICLE 2

JURISDICTION

475.521. DEFINITIONS; SIGNIFICANT CONNECTION FACTORS.

2 (a) In this article:

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

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

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

16 (b) In determining under Section 475.523 and subsection (e) of Section 475.531
17 whether a respondent has a significant connection with a particular state, the court shall
18 consider:

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

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

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

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

475.522. EXCLUSIVE BASIS. This article provides the exclusive jurisdictional
2 basis for a court of this state to appoint a guardian or issue a protective order for an adult.

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

3 (1) this state was the respondent's home state;

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

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

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

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

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

15 (iii) the court in this state concludes that it is an appropriate forum under the
16 factors set forth in Section 475.526;

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

21 (4) the requirements for special jurisdiction under Section 475.524 are met.

475.524. SPECIAL JURISDICTION.

2 (a) A court of this state lacking jurisdiction under Section 475.523 has special
3 jurisdiction to do any of the following:

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

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

8 (3) appoint a guardian or conservator for an incapacitated or protected person for
9 whom a provisional order to transfer the proceeding from another state has been issued
10 under procedures similar to Section 475.531.

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

475.525. EXCLUSIVE AND CONTINUING JURISDICTION. Except as otherwise
2 provided in Section 475.524, a court that has appointed a guardian or issued a protective
3 order consistent with Sections 475.501 to 475.555 has exclusive and continuing jurisdiction
4 over the proceeding until it is terminated by the court or the appointment or order expires
5 by its own terms.

475.526. APPROPRIATE FORUM.

2 (a) A court of this state having jurisdiction under Section 475.523 to appoint a
3 guardian or issue a protective order may decline to exercise its jurisdiction if it determines
4 at any time that a court of another state is a more appropriate forum.

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

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

11 (1) any expressed preference of the respondent;

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

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

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

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

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

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

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

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

475.527. JURISDICTION DECLINED BY REASON OF CONDUCT.

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

5 (1) decline to exercise jurisdiction;

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

11 (3) continue to exercise jurisdiction after considering:

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

14 (B) whether it is a more appropriate forum than the court of any other state under
15 the factors set forth in subsection (c) of Section 475.526; and

16 (C) whether the court of any other state would have jurisdiction under factual
17 circumstances in substantial conformity with the jurisdictional standards of Section
18 475.523.

19 (b) If a court of this state determines that it acquired jurisdiction to appoint a
20 guardian or issue a protective order because a party seeking to invoke its jurisdiction
21 engaged in unjustifiable conduct, it may assess against that party necessary and reasonable
22 expenses, including attorney's fees, investigative fees, court costs, communication expenses,
23 witness fees and expenses, and travel expenses. The court may not assess fees, costs, or
24 expenses of any kind against this state or a governmental subdivision, agency, or
25 instrumentality of this state unless authorized by law other than Sections 475.501 to
26 475.555.

2 475.528. NOTICE OF PROCEEDING. If a petition for the appointment of a
3 guardian or issuance of a protective order is brought in this state and this state was not the
4 respondent's home state on the date a petition was filed, in addition to complying with the
5 notice requirements of this state, notice of the proceeding must be given to those persons
6 who would be entitled to notice of the petition if a proceeding were brought in the
7 respondent's home state. The notice must be given in the same manner as notice is given
8 in this state.

2 475.529. PROCEEDINGS IN MORE THAN ONE STATE. Except for a petition
3 for the appointment of a guardian in an emergency or issuance of a protective order
4 limited to property located in this state as provided in subdivision (1) or (2) of subsection
5 (a) of Section 475.524, if a petition for the appointment of a guardian or issuance of a
6 protective order is filed in this and another state and neither petition has been dismissed
7 or withdrawn, the following rules apply:

8 (1) If the court in this state has jurisdiction under Section 475.523, it may proceed
9 with the case unless a court in another state acquires jurisdiction under provisions similar
10 to Section 475.523 before the appointment or issuance of the order.

11 (2) If the court in this state does not have jurisdiction under Section 475.523,
12 whether at the time the petition is filed or at any time before the appointment or issuance
13 of the order, the court shall stay the proceeding and communicate with the court in the
14 other state. If the court in the other state has jurisdiction, the court in this state shall

14 dismiss the petition unless the court in the other state determines that the court in this state
15 is a more appropriate forum.

ARTICLE 3

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

2 475.531. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO
3 ANOTHER STATE.

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

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

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

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

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

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

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

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

27 (1) the protected person is physically located in or is reasonably expected to move
28 permanently to the other state, or the protected person has a significant connection to the
29 other state considering the factors set forth in subsection (b) of Section 475.521;

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

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

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

36 (1) a provisional order accepting the proceeding from the court to which the
37 proceeding is to be transferred which is issued under provisions similar to Section 475.532;
38 and

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

475.532. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP
2 **TRANSFERRED FROM ANOTHER STATE.**

3 (a) To confirm transfer of a guardianship or conservatorship transferred to this
4 state under provisions similar to those in Section 475.331, the guardian or conservator shall
5 petition the court in this state to accept the guardianship or conservatorship. The petition
6 must include a certified copy of the other state's provisional order.

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

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

14 (d) The court shall issue an order provisionally granting a petition filed under
15 subsection (a) unless:

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

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

19 (e) The court shall issue a final order accepting the proceeding and appointing the
20 guardian or conservator as guardian or conservator in this state upon its receipt from the
21 court from which the proceeding is being transferred of a final order issued under
22 provisions similar to Section 475.531 transferring the proceeding to this state.

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

26 (g) In granting a petition under this section, the court shall recognize a
27 guardianship or conservatorship order from the other state, including the determination

28 of the incapacitated or protected person's incapacity and the appointment of the guardian
29 or conservator.

30 (h) The denial by a court of this state of a petition to accept guardianship or
31 conservatorship transferred from another state does not affect the ability of the guardian
32 or conservator to seek appointment as guardian or conservator in this state under this
33 chapter if the court has jurisdiction to make an appointment other than by reason of the
34 provisional order of transfer.

ARTICLE 4

REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

475.541. REGISTRATION OF GUARDIANSHIP ORDERS. If a guardian has
2 been appointed in another state and a petition for the appointment of a guardian is not
3 pending in this state, the guardian appointed in another state, after giving notice to the
4 appointing court of an intent to register, may register the guardianship order in this state
5 by filing as a foreign judgment in a court of this state, in any appropriate county of this
6 state, certified copies of the order and letters of office.

475.542. REGISTRATION OF PROTECTIVE ORDERS. If a conservator has
2 been appointed in another state and a petition for a protective order is not pending in this
3 state, the conservator appointed in another state, after giving notice to the appointing court
4 of an intent to register, may register the protective order in this state by filing as a foreign
5 judgment in a court of this state, in any county in which property belonging to the
6 protected person is located, certified copies of the order and letters of office and of any
7 bond.

475.543. EFFECT OF REGISTRATION.

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

7 (b) A court of this state may grant any relief available under Sections 475.501 to
8 475.555 and other law of this state to enforce a registered order.

ARTICLE 5

MISCELLANEOUS PROVISIONS

475.551. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In
2 applying and construing this uniform act, consideration must be given to the need to
3 promote uniformity of the law with respect to its subject matter among states that enact
4 it.

475.552. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. Sections 475.501 to 475.555 modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

475.555. TRANSITIONAL PROVISION.
(a) Sections 475.501 to 475.555 applies to guardianship and protective proceedings begun on or after the effective date of Sections 475.501 to 475.555.

(b) Articles 1, 3, 4 and Sections 475.551 and 475.552 apply to proceedings begun before the effective date of Sections 475.501 to 475.555, regardless of whether a guardianship or protective order has been issued.

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