

1 S.169

2 Introduced by Senator Campbell

3 Referred to Committee on

4 Date:

5 Subject: Decedents' estates and fiduciary duties; uniform adult guardianship

6 and protective proceedings jurisdiction

7 Statement of purpose: This bill proposes to enact the Uniform Adult
8 Guardianship and Protective Proceedings Jurisdiction Act in Vermont. The act
9 establishes which state has jurisdiction to make the initial guardianship
10 decision, provides for transfer of guardianship cases between jurisdictions, and
11 allows recognition of an out-of-state guardian's authority to deal with issues in
12 the state on a limited basis.

13 An act relating to uniform adult guardianship and protective proceedings
14 jurisdiction

15 It is hereby enacted by the General Assembly of the State of Vermont:

16 Sec. 1. 14 V.S.A. chapter 114 is added to read:

17 CHAPTER 114. UNIFORM ADULT GUARDIANSHIP AND

18 PROTECTIVE PROCEEDINGS JURISDICTION ACT

19 Subchapter 1. General Provisions

1 § 3151. SHORT TITLE

2 This act may be cited as the Uniform Adult Guardianship and Protective
3 Proceedings Jurisdiction Act.

4 § 3152. DEFINITIONS

5 In this act:

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

7 (2) "Conservator" means a person appointed by the court to administer
8 the property of an adult.

9 (3) "Guardian" means a person appointed by the court to make decisions
10 regarding an adult, including a person appointed under Title 14.

11 (4) "Guardianship order" means an order appointing a guardian.

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

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

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

19 (8) "Person," except in the term "incapacitated person" or "protected
20 person," means an individual, corporation, business trust, estate, trust,
21 partnership, limited liability company, association, joint venture, public

1 corporation, government or governmental subdivision, agency, or
2 instrumentality, or any other legal or commercial entity.

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

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

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

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

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

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

18 § 3153. INTERNATIONAL APPLICATION OF ACT

19 A court of this state may treat a foreign country as if it were a state for the
20 purpose of applying this subchapter and subchapters 2, 3, and 5 of this chapter.

1 § 3154. COMMUNICATION BETWEEN COURTS

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

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

10 § 3155. COOPERATION BETWEEN COURTS

11 (a) In a guardianship or protective proceeding in this state, a court of this
12 state may request the appropriate court of another state to do any of the
13 following:

14 (1) hold an evidentiary hearing;

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

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

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

20 (5) forward to the court of this state a certified copy of the transcript or
21 other record of a hearing under subdivision (1) of this subsection or any other

1 proceeding, any evidence otherwise produced under subdivision (2) of this
2 subsection, and any evaluation or assessment prepared in compliance with an
3 order under subdivision (3) or (4) of this subsection;

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

7 (7) issue an order authorizing the release of medical, financial, criminal,
8 or other relevant information in that state, including protected health
9 information as defined in 45 C.F.R. Section 164.504, as amended.

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

15 § 3156. TAKING TESTIMONY IN ANOTHER STATE

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

1 prescribe the manner in which and the terms upon which the testimony is to be
2 taken.

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

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

12 Subchapter 2. Jurisdiction

13 § 3161. DEFINITIONS; SIGNIFICANT CONNECTION FACTORS

14 (a) In this subchapter:

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

19 (2) "Home state" means the state in which the respondent was
20 physically present, including any period of temporary absence, for at least six
21 consecutive months immediately before the filing of a petition for a protective

1 order or the appointment of a guardian; or if none, the state in which the
2 respondent was physically present, including any period of temporary absence,
3 for at least six consecutive months ending within the six months prior to the
4 filing of the petition.

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

9 (b) In determining under sections 3163 and 3171(e) of this title whether a
10 respondent has a significant connection with a particular state, the probate
11 court shall consider:

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

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

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

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

1 § 3162. EXCLUSIVE BASIS

2 This subchapter provides the exclusive jurisdictional basis for a probate
3 court of this state to appoint a guardian or issue a protective order for an adult.

4 The probate court shall have exclusive original jurisdiction to determine
5 whether this state has jurisdiction pursuant to this subchapter.

6 § 3163. JURISDICTION

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

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

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

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

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

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

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

1 (iii) the probate court in this state concludes that it is an
2 appropriate forum under the factors set forth in section 3166 of this title;

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

8 (4) the requirements for special jurisdiction under section 3164 of this
9 title are met.

10 § 3164. SPECIAL JURISDICTION

11 (a) A probate court of this state lacking jurisdiction under section 3163 of
12 this title has special jurisdiction to do any of the following:

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

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

17 (3) appoint a guardian or conservator for an incapacitated or protected
18 person for whom a provisional order to transfer the proceeding from another
19 state has been issued under procedures similar to section 3171 of this title.

20 (b) If a petition for the appointment of a guardian in an emergency is
21 brought in this state and this state was not the respondent's home state on the

1 date the petition was filed, the probate court shall dismiss the proceeding at the
2 request of the court of the home state, if any, whether dismissal is requested
3 before or after the emergency appointment.

4 § 3165. EXCLUSIVE AND CONTINUING JURISDICTION

5 Except as otherwise provided in section 3164 of this title, a court that has
6 appointed a guardian or issued a protective order consistent with this act has
7 exclusive jurisdiction over the proceeding until jurisdiction is terminated by
8 the probate court or the appointment or order expires by its own terms.

9 § 3166. APPROPRIATE FORUM

10 (a) A probate court of this state having jurisdiction under section 3163 of
11 this title to appoint a guardian or issue a protective order may decline to
12 exercise its jurisdiction if it determines at any time that a court of another state
13 is a more appropriate forum.

14 (b) If a probate court of this state declines to exercise its jurisdiction under
15 subsection (a) of this section, it shall either dismiss or stay the proceeding.

16 The probate court may impose any condition the probate court considers just
17 and proper, including the condition that a petition for the appointment of a
18 guardian or issuance of a protective order be filed promptly in another state.

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

21 (1) any expressed preference of the respondent;

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

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

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

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

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

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

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

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

15 § 3167. JURISDICTION DECLINED BY REASON OF CONDUCT

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

19 (1) decline to exercise jurisdiction;

20 (2) exercise jurisdiction for the limited purpose of fashioning an
21 appropriate remedy to ensure the health, safety, and welfare of the respondent

1 or the protection of the respondent's property or prevent a repetition of the
2 unjustifiable conduct, including staying the proceeding until a petition for the
3 appointment of a guardian or issuance of a protective order is filed in a court of
4 another state having jurisdiction; or

5 (3) continue to exercise jurisdiction after considering:

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

9 (B) whether it is a more appropriate forum than the court of any other
10 state under the factors set forth in subsection 3166(c) of this title; and

11 (C) whether the court of any other state would have jurisdiction
12 under factual circumstances in substantial conformity with the jurisdictional
13 standards of section 3163 of this title.

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

1 § 3168. NOTICE OF PROCEEDING

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

9 § 3169. PROCEEDINGS IN MORE THAN ONE STATE

10 Except for a petition for the appointment of a guardian in an emergency or
11 issuance of a protective order limited to property located in this state under
12 subdivision 3164(a)(1) or (2) of this title, if a petition for the appointment of a
13 guardian or issuance of a protective order is filed in this state and in another
14 state and neither petition has been dismissed or withdrawn, the following rules
15 apply:

16 (1) If the probate court in this state has jurisdiction under section 3163
17 of this title, it may proceed with the case unless a court in another state
18 acquires jurisdiction under provisions similar to section 3163 of this title
19 before the appointment or issuance of the order.

20 (2) If the probate court in this state does not have jurisdiction under
21 section 3163 of this title, whether at the time the petition is filed or at any time

1 before the appointment or issuance of the order, the probate court shall stay the
2 proceeding and communicate with the court in the other state. If the court in
3 the other state has jurisdiction, the probate court in this state shall dismiss the
4 petition unless the court in the other state determines that the probate court in
5 this state is a more appropriate forum.

6 Subchapter 3. Transfer of Guardianship or Conservatorship

7 § 3171. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO
8 ANOTHER STATE

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

11 (b) Notice of a petition under subsection (a) of this section must be given to
12 the persons that would be entitled to notice of a petition in this state for the
13 appointment of a guardian or conservator.

14 (c) On the probate court's own motion or on request of the guardian or
15 conservator, the incapacitated or protected person, or other person required to
16 be notified of the petition, the probate court shall hold a hearing on the petition
17 filed pursuant to subsection (a) of this section.

18 (d) The probate court shall issue an order provisionally granting a petition
19 to transfer a guardianship and shall direct the guardian to petition for
20 guardianship in the other state if the probate court is satisfied that the

1 guardianship will be accepted by the court in the other state and the probate
2 court finds that:

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

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

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

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

15 (1) the protected person is physically present in or is reasonably
16 expected to move permanently to the other state, or the protected person has a
17 significant connection to the other state considering the factors in subsection
18 3161(b) of this chapter;

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

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

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

5 (1) a provisional order accepting the proceeding from the court to which
6 the proceeding is to be transferred which is issued under provisions similar to
7 section 3172 of this title; and

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

10 § 3172. ACCEPTING GUARDIANSHIP TRANSFERRED FROM
11 ANOTHER STATE

12 (a) To confirm transfer of a guardianship or conservatorship transferred to
13 this state under provisions similar to section 3171 of this title, the guardian or
14 conservator must petition the probate court in this state to accept the
15 guardianship or conservatorship. The petition must also include a certified
16 copy of the other state's provisional order of transfer.

17 (b) Notice of a petition under subsection (a) of this section must be given to
18 those persons that would be entitled to notice if the petition were a petition for
19 the appointment of a guardian or issuance of a protective order in both the
20 transferring state and this state. The notice must be given in the same manner
21 as notice is required to be given in this state.

1 (c) On the probate court's own motion or on request of the guardian or
2 conservator, the incapacitated or protected person, or other person required to
3 be notified of the proceeding, the probate court shall hold a hearing on a
4 petition filed pursuant to subsection (a) of this section.

5 (d) The probate court shall issue an order provisionally granting a petition
6 filed under subsection (a) of this section unless:

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

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

11 (e) The probate court shall issue a final order accepting the proceeding and
12 appointing the guardian or conservator as guardian in this state upon its receipt
13 from the court from which the proceeding is being transferred of a final order
14 issued under provisions similar to section 3171 of this title transferring the
15 proceeding to this state.

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

20 (g) In granting a petition under this section, the probate court shall
21 recognize a guardianship or conservatorship order from another state.

1 including the determination of the incapacitated or protected person's
2 incapacity and the appointment of the guardian or conservator.

3 (h) The denial by a probate court of this state of a petition to accept a
4 guardianship or conservatorship transferred from another state does not affect
5 the ability of the guardian or conservator to seek appointment as guardian in
6 this state under this title if the probate court has jurisdiction to make an
7 appointment other than by reason of the provisional order of transfer.

8 Subchapter 4. Registration and Recognition of Orders from Other States

9 § 3181. REGISTRATION OF GUARDIANSHIP ORDERS

10 If a guardian has been appointed in another state and a petition for the
11 appointment of a guardian is not pending in this state, the guardian appointed
12 in the other state, after giving notice to the appointing court of an intent to
13 register, may register the guardianship order in this state by filing as a foreign
14 judgment in a probate court, in any appropriate county of this state, certified
15 copies of the order and letters of office.

16 § 3182. REGISTRATION OF PROTECTIVE ORDERS

17 If a conservator has been appointed in another state and a petition for a
18 protective order is not pending in this state, the conservator appointed in the
19 other state, after giving notice to the appointing court of an intent to register,
20 may register the protective order in this state by filing as a foreign judgment in
21 a probate court of this state, in any county of this state in which property

1 belonging to the protected person is located, certified copies of the order and
2 letters of office and of any bond.

3 § 3183. EFFECT OF REGISTRATION

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

10 (b) A probate court of this state may grant any relief available under this
11 act and other law of this state to enforce a registered order.

12 Subchapter 5. Miscellaneous Provisions

13 § 3191. UNIFORMITY OF APPLICATION AND CONSTRUCTION

14 In applying and construing this uniform act, consideration must be given to
15 the need to promote uniformity of the law with respect to its subject matter
16 among states that enact it.

17 § 3192. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
18 NATIONAL COMMERCE ACT

19 This act modifies, limits, and supersedes the federal Electronic Signatures
20 in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not
21 modify, limit, or supersede section 101(c) of that act, 15 U.S.C. § 7001(c), or

1 authorize electronic delivery of any of the notices described in section 103(b)
2 of that act, 15 U.S.C. § 7003(b).

3 § 3193. TRANSITIONAL PROVISION

4 (a) This act applies to guardianship and protective proceedings begun on or
5 after July 1, 2010.

6 (b) Subchapters 1, 3, and 4 of this chapter and sections 3191 and 3192 of
7 this title apply to proceedings begun before July 1, 2010, regardless of whether
8 a guardianship or protective order has been issued.

9 § 3194. EFFECTIVE DATE

10 This chapter takes effect July 1, 2010.

11 Sec. 2. 14 V.S.A. § 3062 is amended to read:

12 § 3062. JURISDICTION; REVIEW OF GUARDIAN'S ACTIONS

13 (a) If this state has jurisdiction of a guardianship proceeding pursuant to
14 chapter 114 of this title, then the probate court shall have exclusive jurisdiction
15 over the proceedings. All proceedings to determine whether this court has
16 jurisdiction pursuant to chapter 114 shall be brought in probate court.

17 (b) The probate court shall have exclusive original jurisdiction over all
18 proceedings brought under the authority of this chapter or pursuant to section
19 9718 of Title 18.

- 1 ~~(b)~~(c) The probate court shall have supervisory authority over guardians.
- 2 Any interested person may seek review of a guardian's proposed or past
- 3 actions by filing a motion with the court.