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SENATE BILL NO. 80

Offered January 13, 2010

Prefiled January 5, 2010

A *BILL to amend and reenact § 37.2-1001 of the Code of Virginia and to amend the Code of Virginia by adding in Title 37.2 a chapter numbered 10.1, containing articles numbered 1 through 5, consisting of sections numbered 37.2-1031 through 37.2-1052, relating to the Adult Guardianship and Protective Proceedings Jurisdiction Act.*

Patron—Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 37.2-1001 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 37.2 a chapter numbered 10.1, containing articles numbered 1 through 5, consisting of sections numbered 37.2-1031 through 37.2-1052, as follows:

§ 37.2-1001. Filing of petition; jurisdiction; instructions to be provided.

A. A petition for the appointment of a guardian or conservator shall be filed with the circuit court of the county or city in which the respondent is a resident or is located or in which the respondent resided immediately prior to becoming a patient, voluntarily or involuntarily, in a hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, or a resident in a nursing facility or nursing home, convalescent home, assisted living facility as defined in § 63.2-100, or any other similar institution or, if the petition is for the appointment of a conservator for a nonresident with property in the state, in the city or county in which the respondent's property is located.

B. Article 2 (§ 37.2-1037 *et seq.*) of the *Adult Guardianship and Protective Proceedings Jurisdiction Act* provides the exclusive jurisdictional basis for a court of the Commonwealth to appoint a guardian or conservator for an adult.

C. Where the petition is brought by a parent or guardian of a respondent who is under the age of 18, the petition may be filed no earlier than six months prior to the respondent's eighteenth birthday. Where the petition is brought by any other person, the petition may be filed no earlier than the respondent's eighteenth birthday.

D. Instructions regarding the duties, powers, and liabilities of guardians and conservators shall be provided to each clerk of court by the Office of the Executive Secretary of the Supreme Court, and the clerk shall provide that information to each guardian and conservator upon notice of appointment.

E. The circuit court in which the proceeding is first commenced may order a transfer of venue if it would be in the best interest of the respondent.

CHAPTER 10.1.**ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT.****Article 1.****General Provisions.**

§ 37.2-1031. Short title.

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

§ 37.2-1032. Definitions.

In this act:

"Adult" means an individual who has attained 18 years of age.

"Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under Chapter 10 (§ 37.2-1000 *et seq.*).

"Court" means a court of competent jurisdiction as determined by otherwise applicable Virginia law to establish, enforce, or modify a guardianship or conservatorship order or an entity authorized under the law of another state to establish, enforce, or modify a guardianship or conservatorship order.

"Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Chapter 10 (§ 37.2-1000 *et seq.*).

"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.

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59 "Person," except in the term "incapacitated person" or "protected person", means an individual,
60 corporation, business trust, estate, trust, partnership, limited liability company, association, joint
61 venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any
62 other legal or commercial entity.

63 "Protected person" means an adult for whom a protective order has been issued.

64 "Protective order" means an order appointing a conservator.

65 "Protective proceeding" means a judicial proceeding in which a protective order is sought or has
66 been issued.

67 "Record" means information that is inscribed on a tangible medium or that is stored in an electronic
68 or other medium and is retrievable in perceivable form.

69 "Respondent" means an adult for whom a protective order or the appointment of a guardian is
70 sought.

71 "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States
72 Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the
73 jurisdiction of the United States.

74 § 37.2-1033. International application of Act.

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

77 § 37.2- 1034. Communication between courts.

78 (a) A court of the Commonwealth may communicate with a court in another state concerning a
79 proceeding arising under this Act. The court may allow the parties to participate in the communication.
80 Except as otherwise provided in subsection (b), the court shall make a record of the communication.
81 The record may be limited to the fact that the communication occurred.

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

84 § 37.2-1035. Cooperation between courts.

85 (a) In a guardianship or protective proceeding in the Commonwealth, a court in the Commonwealth
86 may request the appropriate court of another state to do any of the following:

87 1. Hold an evidentiary hearing;

88 2. Order a person in that state to produce evidence or give testimony pursuant to procedures of that
89 state;

90 3. Order that an evaluation or assessment be made of the respondent;

91 4. Order any appropriate investigation of a person involved in a proceeding;

92 5. Forward to the court of the Commonwealth a certified copy of the transcript or other record of a
93 hearing under subdivision 1 or any other proceeding, any evidence otherwise produced under
94 subdivision 2, and any evaluation or assessment prepared in compliance with an order under
95 subdivision 3 or 4;

96 6. Issue any order necessary to assure the appearance in the proceeding of a person whose presence
97 is necessary for either court to make a determination, including the respondent or the incapacitated or
98 protected person; and

99 7. Issue an order authorizing the release of medical, financial, criminal, or other relevant
100 information in that state, including protected health information as defined in 45 C.F.R. Section
101 164.504, as amended.

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

105 § 37.2-1036. Taking testimony in another state.

106 (a) In a guardianship or protective proceeding, in addition to other procedures that may be
107 available, testimony of a witness who is located in another state may be offered by deposition or other
108 means allowable in the Commonwealth for testimony taken in another state. The court on its own
109 motion may order that the testimony of a witness be taken in another state and may prescribe the
110 manner in which and the terms upon which the testimony is to be taken.

111 (b) In a guardianship or protective proceeding, a court in the Commonwealth may permit a witness
112 located in another state to be deposed or to testify by telephone or audiovisual or other electronic
113 means. A court in the Commonwealth shall cooperate with the court of the other state in designating an
114 appropriate location for the deposition or testimony.

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

118 Article 2.

119 Jurisdiction.

120 § 37.2-1037. Definitions; significant connection factors.

(a) In this article:

1. "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.

2. "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.

3. "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 § 37.2-1039 and subsection (e) of § 37.2-1046 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.

§ 37.2-1038. Exclusive basis.

This article provides the exclusive jurisdictional basis for a court of the Commonwealth to appoint a guardian or issue a protective order for an adult.

§ 37.2-1039. Jurisdiction.

A court of the Commonwealth has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

1. The Commonwealth is the respondent's home state;

2. On the date the petition is filed, the Commonwealth 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 the Commonwealth 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 in the Commonwealth concludes that it is an appropriate forum under the factors set forth in § 37.2-1042;

3. The Commonwealth does not have jurisdiction under either subdivision 1 or 2, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because the Commonwealth is the more appropriate forum, and jurisdiction in the Commonwealth is consistent with the constitutions of the Commonwealth and the United States; or

4. The requirements for special jurisdiction under § 37.2-1040 are met.

§ 37.2-1040. Special jurisdiction.

(a) A court of the Commonwealth lacking jurisdiction under the provisions of § 37.2-1039 has special jurisdiction to do any of the following:

1. Appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in the Commonwealth;

2. Issue a protective order with respect to real or tangible personal property located in the Commonwealth; 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 § 37.2-1046.

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

§ 37.2-1041. Exclusive and continuing jurisdiction.

Except as otherwise provided in § 37.2-1040, a court that has appointed a guardian or issued a protective order consistent with this Act has exclusive and continuing jurisdiction over the proceeding

182 until it is terminated by the court or the appointment or order expires by its own terms.

183 § 37.2-1042. *Appropriate forum.*

184 (a) A court of the Commonwealth having jurisdiction under § 37.2-1039 to appoint a guardian or
185 issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court
186 of another state is a more appropriate forum.

187 (b) If a court of the Commonwealth declines to exercise its jurisdiction under subsection (a), it shall
188 either dismiss or stay the proceeding. The court may impose any condition the court considers just and
189 proper, including the condition that a petition for the appointment of a guardian or issuance of a
190 protective order be filed promptly in another state.

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

193 1. Any expressed preference of the respondent;

194 2. Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and
195 which state could best protect the respondent from the abuse, neglect, or exploitation;

196 3. The length of time the respondent was physically present in or was a legal resident of the
197 Commonwealth or another state;

198 4. The distance of the respondent from the court in each state;

199 5. The financial circumstances of the respondent's estate;

200 6. The nature and location of the evidence;

201 7. The ability of the court in each state to decide the issue expeditiously and the procedures
202 necessary to present evidence;

203 8. The familiarity of the court of each state with the facts and issues in the proceeding; and

204 9. If an appointment were made, the court's ability to monitor the conduct of the guardian or
205 conservator.

206 § 37.2-1043. *Jurisdiction declined by reason of conduct.*

207 (a) If at any time a court of the Commonwealth determines that it acquired jurisdiction to appoint a
208 guardian or issue a protective order because a person seeking to invoke its jurisdiction has engaged in
209 unjustifiable conduct, the court may:

210 1. Decline to exercise jurisdiction;

211 2. Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the
212 health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a
213 repetition of the unjustifiable conduct, including staying the proceeding until a petition for the
214 appointment of a guardian or issuance of a protective order is filed in a court of another state having
215 jurisdiction; or

216 3. Continue to exercise jurisdiction after considering:

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

219 (B) Whether it is a more appropriate forum than the court of any other state under the factors set
220 forth in subsection (c) of § 37.2-1042; and

221 (C) Whether the court of any other state would have jurisdiction under factual circumstances in
222 substantial conformity with the jurisdictional standards of § 37.2-1039.

223 (b) If a court of the Commonwealth determines that it acquired jurisdiction to appoint a guardian or
224 issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable
225 conduct, it may assess against that party necessary and reasonable expenses, including attorney fees,
226 investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses.
227 The court may not assess fees, costs, or expenses of any kind against the Commonwealth or a
228 governmental subdivision, agency, or instrumentality of the Commonwealth unless authorized by law
229 other than this Act.

230 § 37.2-1044. *Notice of proceeding.*

231 If a petition for the appointment of a guardian or issuance of a protective order is brought in the
232 Commonwealth and the Commonwealth was not the respondent's home state on the date the petition was
233 filed, in addition to complying with the notice requirements of the Commonwealth, notice of the petition
234 shall be given to those persons who would be entitled to notice of the petition if a proceeding were
235 brought in the respondent's home state. The notice shall be given in the same manner as notice is
236 required to be given in the Commonwealth.

237 § 37.2-1045. *Proceedings in more than one state.*

238 Except for a petition for the appointment of a guardian in an emergency or issuance of a protective
239 order limited to property located in the Commonwealth under subdivision (a)(1) or (a)(2) of
240 § 37.2-1040, if a petition for the appointment of a guardian or issuance of a protective order is filed in
241 the Commonwealth and in another state and neither petition has been dismissed or withdrawn, the
242 following rules apply:

243 1. If the court in the Commonwealth has jurisdiction under § 37.2-1039, it may proceed with the

case unless a court in another state acquires jurisdiction under provisions similar to § 37.2-1039 before the appointment or issuance of the order.

2. If the court in the Commonwealth does not have jurisdiction under § 37.2-1039, 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 the Commonwealth shall dismiss the petition unless the court in the other state determines that the court in the Commonwealth is a more appropriate forum.

Article 3.

Transfer of Guardianship or Conservatorship.

§ 37.2-1046. Transfer of guardianship or conservatorship to another state.

(a) A guardian or conservator appointed in the Commonwealth 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 Commonwealth 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 subsection (b) of § 37.2-1037;

(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 of the Commonwealth shall issue a final order confirming the transfer and terminating the guardianship or conservatorship subject to 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 § 37.2-1047; and

2. The performance of all actions by the guardian or conservator and receipt by the court of the Commonwealth of all documents required to terminate a guardianship or conservatorship in the Commonwealth.

§ 37.2-1047. Accepting guardianship or conservatorship transferred from another state.

(a) To confirm transfer of a guardianship or conservatorship transferred to the Commonwealth under provisions similar to § 37.2-1046, the guardian or conservator shall petition the court in the Commonwealth 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 both the transferring state and the Commonwealth. The notice shall be given in the same manner as notice is required to be given in the Commonwealth.

(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 Commonwealth.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in the Commonwealth upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to

305 § 37.2-1046 transferring the proceeding to the Commonwealth.

306 The final order accepting transfer of a guardianship or conservatorship shall contain a
307 determination of whether the guardianship or conservatorship needs to be modified to conform to the
308 law of the Commonwealth.

309 (f) In granting a petition under this section, the court shall recognize a guardianship or
310 conservatorship order from the other state, including the determination of the incapacitated or protected
311 person's incapacity and the appointment of the guardian or conservator.

312 (g) The denial by a court of the Commonwealth of a petition to accept a guardianship or
313 conservatorship transferred from another state does not affect the ability of the guardian or conservator
314 to seek appointment as guardian or conservator in the Commonwealth under Chapter 10 (§ 37.2-1000 et
315 seq.) if the court has jurisdiction to make an appointment other than by reason of the provisional order
316 of transfer.

317 Article 4.

318 Registration and Recognition of Orders from Other States.

319 § 37.2-1048. Registration of guardianship orders.

320 If a guardian has been appointed in another state and a petition for the appointment of a guardian
321 is not pending in the Commonwealth, the guardian appointed in the other state, after giving notice to the
322 appointing court of an intent to register, may register the guardianship order in the Commonwealth
323 by filing as a foreign judgment in a court, in any appropriate county or city of the Commonwealth,
324 certified copies of the order and letters of office.

325 § 37.2-1049. Registration of protective orders.

326 If a conservator has been appointed in another state and a petition for a protective order is not
327 pending in the Commonwealth, the conservator appointed in the other state, after giving notice to the
328 appointing court of an intent to register, may register the protective order in the Commonwealth by
329 filing as a foreign judgment in a court of the Commonwealth, in any county or city in which property
330 belonging to the protected person is located, certified copies of the order and letters of office and of
331 any bond.

332 § 37.2-1050. Effect of registration.

333 (a) Upon registration of a guardianship or protective order from another state, the guardian or
334 conservator may exercise in the Commonwealth all powers authorized in the order of appointment
335 except as prohibited under the laws of the Commonwealth, including maintaining actions and
336 proceedings in the Commonwealth and, if the guardian or conservator is not a resident of the
337 Commonwealth, subject to any conditions imposed upon nonresident parties.

338 (b) A court of the Commonwealth may grant any relief available under this Act and other law of the
339 Commonwealth to enforce a registered order.

340 Article 5.

341 Miscellaneous Provisions.

342 § 37.2-1051. Uniformity of application and construction.

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

345 § 37.2-1052. Relation to electronic signatures in global and national commerce act.

346 This Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National
347 Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c)
348 of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in
349 Section 103(b) of that act, 15 U.S.C. Section 7003(b).