



OFFICE OF THE GOVERNOR

CHESTER J. CULVER
GOVERNOR

PATTY JUDGE
LT. GOVERNOR

March 22, 2010

The Honorable Michael Mauro
Secretary of State
State Capitol Building
LOCAL

Dear Mr. Secretary:

I hereby transmit:

House File 734, an Act relating to the uniform adult guardianship and protective proceedings Act relating to the establishment, transfer, and recognition of guardianships and conservatorships in multistate cases, and including effective date and applicability provisions.

The above House File is hereby approved this date.

Sincerely,

A handwritten signature in black ink, appearing to read "Chester J. Culver".

Chester J. Culver
Governor

CJC:bdj

cc: Secretary of the Senate
Chief Clerk of the House





House File 734

AN ACT

RELATING TO THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT RELATING TO THE ESTABLISHMENT, TRANSFER, AND RECOGNITION OF GUARDIANSHIPS AND CONSERVATORSHIPS IN MULTISTATE CASES, AND INCLUDING EFFECTIVE DATE AND APPLICABILITY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION XIX

PART 1

GENERAL PROVISIONS

Section 1. NEW SECTION. 633.800 Short title.

This division shall be known and may be cited as the "Iowa Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act".

Sec. 2. NEW SECTION. 633.801 Definitions.

As used in this division, unless the context otherwise requires:

1. "Adult" means an individual who is eighteen years of age or older.

2. "Conservator" means a person appointed by the court to have the custody and control of the property of an adult under the provisions of this chapter.

3. "Court" means, when referring to a court of this state, the district court sitting in probate with jurisdiction of conservatorships and guardianships.

4. "Foreign judgment" means a judgment, decree, or order of a court of the United States or of any other court that meets any of the following requirements:

- a. Is entitled to full faith and credit in this state.
- b. Appoints a guardian or conservator in the issuing

jurisdiction.

5. "*Guardian*" means a person appointed by the court to make decisions regarding the adult under the provisions of this chapter.

6. "*Guardianship order*" means an order appointing a guardian as defined in section 633.3.

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

8. "*Incapacitated person*" means an adult who has been adjudged by a court to meet one of the following conditions:

a. Has a decision making capacity which is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur.

b. Has a decision making capacity which is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.

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

10. "*Person*" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, or government; governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.

11. "*Protected person*" means an adult for whom a conservatorship has been issued.

12. "*Protective order*" means an order appointing a conservator as defined in section 633.3. "*Protective order*" does not include protective orders issued pursuant to chapter 664A or protective orders issued pursuant to sections 235B.18 and 235B.19.

13. "*Protective proceeding*" means a judicial proceeding in which a conservatorship is sought or has been granted.

14. "*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.

15. "*Respondent*" means an adult for whom a conservatorship or guardianship is sought.

16. "*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.

Sec. 3. NEW SECTION. 633.802 **International application.**

A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying this part and parts 2, 3, and 5.

Sec. 4. NEW SECTION. 633.803 **Communication between courts.**

1. A court of this state may communicate with a court in another state concerning a proceeding arising under this division. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection 2, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

2. Communication between courts concerning schedules, calendars, court records, and other administrative matters may occur without making a record.

Sec. 5. NEW SECTION. 633.804 **Cooperation between courts.**

1. In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

- a. Hold an evidentiary hearing.
- b. Order a person in the other state to produce evidence or give testimony pursuant to procedures of that state.
- c. Order that an evaluation or assessment be made of the respondent.
- d. Order any appropriate investigation of a person involved in a proceeding.
- e. Forward to the court of this state a certified copy of the transcript or other record of the hearing pursuant to paragraph "a" or any other proceeding, the evidence otherwise produced pursuant to paragraph "b", and any evaluation or assessment prepared in compliance with an order pursuant to paragraph "c" or "d".
- f. 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.
- g. Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. § 164.504, as amended.

2. If a court of another state in which a guardianship or protective proceeding is pending requests assistance pursuant to subsection 1, a court of this state has jurisdiction for the

limited purpose of granting the request or making reasonable efforts to comply with the request.

PART 2

JURISDICTION

Sec. 6. NEW SECTION. 633.805 Taking testimony in another state.

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

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

3. Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing shall not be excluded from evidence on an objection based on the best evidence rule.

Sec. 7. NEW SECTION. 633.806 Definitions.

As used in this part, unless the context otherwise requires:

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 either of the following:

a. 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.

b. 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 a petition for a protective order or the appointment of a guardian.

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.

Sec. 8. NEW SECTION. 633.807 Significant connection factors.

In determining whether a respondent has a significant connection with a particular state, the court shall consider all of the following:

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.

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.

Sec. 9. NEW SECTION. 633.808 Exclusive basis.

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

Sec. 10. NEW SECTION. 633.809 Jurisdiction.

A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if any of the following apply:

1. This state is the respondent's home state.

2. This state is a significant-connection state and on the date the petition is filed, any of the following apply:

a. The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum.

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 all of the following apply:

(1) A petition for an appointment or order is not filed in the respondent's home state.

(2) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding.

(3) The court in this state concludes that it is an appropriate forum under the factors set forth in section 633.812.

3. Either of the following apply:

a. This state does not have jurisdiction under either subsection 1 or 2, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the Constitution of the State of Iowa and the Constitution of the United States.

b. The requirements for special jurisdiction under section 633.810 are met.

Sec. 11. NEW SECTION. 633.810 **Special jurisdiction.**

1. A court of this state lacking jurisdiction under section 633.809 has special jurisdiction to do any of the following:

a. Appoint a guardian in an emergency for a period not to exceed ninety days for a respondent who is physically present in this state.

b. Issue a protective order with respect to real or tangible personal property located in this state.

c. 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 633.816.

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

Sec. 12. NEW SECTION. 633.811 **Exclusive and continuing jurisdiction.**

Except as otherwise provided in section 633.810, 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 terminated by the court or the appointment or order expires by its own terms.

Sec. 13. NEW SECTION. 633.812 **Appropriate forum.**

1. A court of this state with jurisdiction under section 633.809 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.

2. If a court of this state declines to exercise its jurisdiction under subsection 1, the court 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.

3. In determining whether it is an appropriate forum, the court shall consider all of the following:

- a.* Any expressed preference of the respondent.
- b.* 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.
- c.* The length of time the respondent was physically present in or was a legal resident of this state or another state.
- d.* The distance of the respondent from the court in each state.
- e.* The financial circumstances of the respondent's estate.
- f.* The nature and location of the evidence.
- g.* The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.
- h.* The familiarity of the court of each state with the facts and issues in the proceeding.
- i.* If an appointment were to be made, the court's ability to monitor the conduct of the guardian or conservator.

Sec. 14. NEW SECTION. 633.813 Jurisdiction declined by reason of conduct.

If at any time a court of this state determines that the court acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may do any of the following:

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.
3. Continue to exercise jurisdiction after considering all of the following:
 - 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 633.812.

c. Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 633.809.

4. If a court of this state determines that the court acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, the court may assess necessary and reasonable expenses against that party, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court shall not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this division.

Sec. 15. NEW SECTION. 633.814 Notice of proceeding.

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

PART 3

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

Sec. 16. NEW SECTION. 633.815 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 this state under section 633.810, if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

1. If the court in this state has jurisdiction under section 633.809, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 633.809 before the appointment or issuance of the order.

2. If the court in this state does not have jurisdiction under section 633.809, whether at the time the petition is filed

or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

Sec. 17. NEW SECTION. 633.816 **Transfer of guardianship or conservatorship to another state.**

1. A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

2. Notice of a petition under subsection 1 shall be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

3. 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 1.

4. 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 all of the following:

a. The incapacitated person is physically present in or is reasonably expected to move permanently to the other state.

b. 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.

c. Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

5. 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 all of the following:

a. 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 633.807.

b. 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.

c. Adequate arrangements will be made for management of the protected person's property.

6. The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of all of the following:

a. A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 633.817.

b. The documents required to terminate a guardianship or conservatorship in this state.

PART 4

REGISTRATION AND RECOGNITION OF
ORDERS FROM OTHER STATES

Sec. 18. NEW SECTION. 633.817 **Accepting guardianship or conservatorship transferred from another state.**

1. To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to section 633.816, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

2. Notice of a petition under subsection 1 must be given to those persons that would be entitled to notice if the petition were to petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

3. 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 1.

4. The court shall issue an order provisionally granting a petition filed under subsection 1 unless any of the following applies:

a. 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.

b. The guardian or conservator is ineligible for appointment in this state.

5. The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 633.816 transferring the proceeding to this state.

6. Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the laws of this state.

7. Subject to subsections 4 and 6, 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.

8. The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under section 633.551 or 633.552, if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

Sec. 19. NEW SECTION. 633.818 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 this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

Sec. 20. NEW SECTION. 633.819 Registration of protective orders.

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

PART 5

MISCELLANEOUS PROVISIONS

Sec. 21. NEW SECTION. 633.820 Effect of registration.

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

2. A court of this state may grant any relief available under this division and other law of this state to enforce a registered order.

Sec. 22. NEW SECTION. 633.821 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.

Sec. 23. NEW SECTION. 633.822 Relation to electronic signatures in global and national commerce act.

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

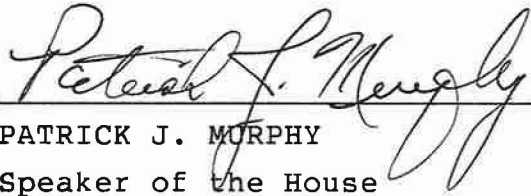
Sec. 24. EFFECTIVE AND APPLICABILITY DATES.


1. Except as provided in subsection 2, this Act takes effect July 1, 2010, and applies to guardianship and protective proceedings in existence on or after that date.

2. Parts 1, 3, and 4 and sections 633.821 and 633.822 apply to proceedings begun before the effective date, regardless of whether a guardianship or protective order has been issued.


Sec. 25. CODE EDITOR DIRECTIVE. The Code editor is directed to transfer division XIX of chapter 633, as enacted in this Act,

to division XV of chapter 633 and to transfer division XV of chapter 633 to division XVI of chapter 633.

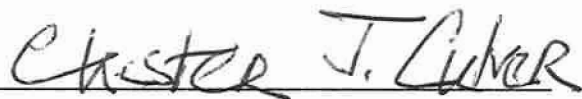

PATRICK J. MURPHY
Speaker of the House


JOHN P. KIBBIE
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 734, Eighty-third General Assembly.


MARK BRANDSGARD
Chief Clerk of the House

Approved March 22nd, 2010


CHESTER J. CULVER
Governor