

Senate File 444 - Introduced

SENATE FILE _____
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1284)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the uniform adult guardianship and protective
2 proceedings Act relating to the establishment, transfer, and
3 recognition of guardianships and conservatorships in
4 multistate cases, and including effective date and
5 applicability provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
7 TLSB 1811SV 83
8 rh/rj/8

PAG LIN

1 1 DIVISION XIX
1 2 PART 1
1 3 GENERAL PROVISIONS
1 4 Section 1. NEW SECTION. 633.800 SHORT TITLE.
1 5 This division shall be known and may be cited as the "Iowa
1 6 Uniform Adult Guardianship and Protective Proceedings
1 7 Jurisdiction Act".
1 8 Sec. 2. NEW SECTION. 633.801 DEFINITIONS.
1 9 As used in this division, unless the context otherwise
1 10 requires:
1 11 1. "Adult" means an individual who is eighteen years of
1 12 age or older.
1 13 2. "Conservator" means a person appointed by the court to
1 14 have the custody and control of the property of an adult under
1 15 the provisions of this chapter.
1 16 3. "Court" means, when referring to a court of this state,
1 17 the district court sitting in probate with jurisdiction of
1 18 conservatorships and guardianships.
1 19 4. "Foreign judgment" means a judgment, decree, or order
1 20 of a court of the United States or of any other court that
1 21 meets any of the following requirements:
1 22 a. Is entitled to full faith and credit in this state.
1 23 b. Appoints a guardian or conservator in the issuing
1 24 jurisdiction.
1 25 5. "Guardian" means a person appointed by the court to
1 26 make decisions regarding the adult under the provisions of
1 27 this chapter.
1 28 6. "Guardianship order" means an order appointing a
1 29 guardian as defined in section 633.3.
1 30 7. "Guardianship proceeding" means a judicial proceeding
1 31 in which an order for the appointment of a guardian is sought
1 32 or has been issued.
1 33 8. "Incapacitated person" means an adult who has been
1 34 adjudged incompetent by a court who meets one or both of the
1 35 following conditions:
2 1 a. Has a decision making capacity which is so impaired
2 2 that the person is unable to care for the person's personal
2 3 safety or to attend to or provide for necessities for the
2 4 person such as food, shelter, clothing, or medical care,
2 5 without which physical injury or illness may occur.
2 6 b. Has a decision making capacity which is so impaired
2 7 that the person is unable to make, communicate, or carry out
2 8 important decisions concerning the person's financial affairs.
2 9 9. "Party" means the respondent, petitioner, guardian,
2 10 conservator, or any other person allowed by the court to
2 11 participate in a guardianship or protective proceeding.
2 12 10. "Person" means an individual, corporation, business
2 13 trust, estate, trust, partnership, limited liability company,

2 14 association, joint venture, public corporation, or government;
2 15 governmental subdivision, agency, or instrumentality; or any
2 16 other legal or commercial entity.

2 17 11. "Protected person" means an adult for whom a
2 18 conservatorship has been issued.

2 19 12. "Protective order" means an order appointing a
2 20 conservator as defined in section 633.3. "Protective order"
2 21 does not include protective orders issued pursuant to chapter
2 22 664A or protective orders issued pursuant to sections 235B.18
2 23 and 235B.19.

2 24 13. "Protective proceeding" means a judicial proceeding in
2 25 which a conservatorship is sought or has been granted.

2 26 14. "Record" means information that is inscribed on a
2 27 tangible medium or that is stored in an electronic or other
2 28 medium and is retrievable in perceivable form.

2 29 15. "Respondent" means an adult for whom a conservatorship
2 30 or guardianship is sought.

2 31 16. "State" means a state of the United States, the
2 32 District of Columbia, Puerto Rico, the United States Virgin
2 33 Islands, a federally recognized Indian tribe, or any territory
2 34 or insular possession subject to the jurisdiction of the
2 35 United States.

3 1 Sec. 3. NEW SECTION. 633.802 INTERNATIONAL APPLICATION.

3 2 A court of this state shall treat a foreign country as if
3 3 it were a state of the United States for the purpose of
3 4 applying this part and parts 2, 3, and 5.

3 5 Sec. 4. NEW SECTION. 633.803 COMMUNICATION BETWEEN
3 6 COURTS.

3 7 1. A court of this state may communicate with a court in
3 8 another state concerning a proceeding arising under this
3 9 division. The court may allow the parties to participate in
3 10 the communication. Except as otherwise provided in subsection
3 11 2, the court shall make a record of the communication. The
3 12 record may be limited to the fact that the communication
3 13 occurred.

3 14 2. Communication between courts concerning schedules,
3 15 calendars, court records, and other administrative matters may
3 16 occur without making a record.

3 17 Sec. 5. NEW SECTION. 633.804 COOPERATION BETWEEN COURTS.

3 18 1. In a guardianship or protective proceeding in this
3 19 state, a court of this state may request the appropriate court
3 20 of another state to do any of the following:

3 21 a. Hold an evidentiary hearing.
3 22 b. Order a person in the other state to produce evidence
3 23 or give testimony pursuant to procedures of that state.
3 24 c. Order that an evaluation or assessment be made of the
3 25 respondent.

3 26 d. Order any appropriate investigation of a person
3 27 involved in a proceeding.

3 28 e. Forward to the court of this state a certified copy of
3 29 the transcript or other record of the hearing pursuant to
3 30 paragraph "a" or any other proceeding, the evidence otherwise
3 31 produced pursuant to paragraph "b", and any evaluation or
3 32 assessment prepared in compliance with an order pursuant to
3 33 paragraph "c" or "d".

3 34 f. Issue any order necessary to assure the appearance in
3 35 the proceeding of a person whose presence is necessary for the
4 1 court to make a determination, including the respondent.

4 2 g. Issue an order authorizing the release of medical,
4 3 financial, criminal, or other relevant information in that
4 4 state, including protected health information as defined in 45
4 5 C.F.R. } 164.504, as amended.

4 6 2. If a court of another state in which a guardianship or
4 7 protective proceeding is pending requests assistance pursuant
4 8 to subsection 1, a court of this state has jurisdiction for
4 9 the limited purpose of granting the request or making
4 10 reasonable efforts to comply with the request.

4 11 Sec. 6. NEW SECTION. 633.805 TAKING TESTIMONY IN ANOTHER
4 12 STATE.

4 13 1. In addition to other procedures that may be available
4 14 in a guardianship or protective proceeding, the testimony of a
4 15 witness who is located in another state may be offered by
4 16 deposition or other means allowable in this state for
4 17 testimony taken in another state. The court on its own motion
4 18 may order that the testimony of a witness be taken in another
4 19 state and may prescribe the manner in which and the terms upon
4 20 which the testimony is to be taken.

4 21 2. In a guardianship or protective proceeding, a court in
4 22 this state may permit a witness located in another state to be
4 23 deposed or to testify by telephone, audiovisual means, or
4 24 other electronic means. A court of this state shall cooperate

4 25 with courts of other states in designating an appropriate
4 26 location for the deposition or testimony.
4 27 3. Documentary evidence transmitted from another state to
4 28 a court of this state by technological means that do not
4 29 produce an original writing shall not be excluded from
4 30 evidence on an objection based on the best evidence rule.

4 31 PART 2

4 32 JURISDICTION

4 33 Sec. 7. NEW SECTION. 633.806 DEFINITIONS.

4 34 As used in this part, unless the context otherwise requires
4 35 otherwise:

5 1 1. "Emergency" means a circumstance that likely will
5 2 result in substantial harm to a respondent's health, safety,
5 3 or welfare, and for which the appointment of a guardian is
5 4 necessary because no other person has authority and is willing
5 5 to act on the respondent's behalf.

5 6 2. "Home state" means either of the following:

5 7 a. The state in which the respondent was physically
5 8 present, including any period of temporary absence, for at
5 9 least six consecutive months immediately before the filing of
5 10 a petition for a protective order or the appointment of a
5 11 guardian.

5 12 b. The state in which the respondent was physically
5 13 present, including any period of temporary absence, for at
5 14 least six consecutive months ending within the six months
5 15 prior to the filing of a petition for a protective order or
5 16 the appointment of a guardian.

5 17 3. "Significant-connection state" means a state, other
5 18 than the home state, with which a respondent has a significant
5 19 connection other than mere physical presence and in which
5 20 substantial evidence concerning the respondent is available.

5 21 Sec. 8. NEW SECTION. 633.807 SIGNIFICANT CONNECTION
5 22 FACTORS.

5 23 1. In determining whether a respondent has a significant
5 24 connection with a particular state, the court shall consider
5 25 all of the following:

5 26 a. The location of the respondent's family and other
5 27 persons required to be notified of the guardianship or
5 28 protective proceeding.

5 29 b. The length of time the respondent at any time was
5 30 physically present in the state and the duration of any
5 31 absence.

5 32 c. The location of the respondent's property.

5 33 d. The extent to which the respondent has ties to the
5 34 state such as voting registration, state or local tax return
5 35 filing, vehicle registration, driver's license, social
6 1 relationship, and receipt of services.

6 2 Sec. 9. NEW SECTION. 633.808 EXCLUSIVE BASIS.

6 3 This part provides the exclusive jurisdictional basis for a
6 4 court of this state to appoint a guardian or issue a
6 5 protective order for an adult.

6 6 Sec. 10. NEW SECTION. 633.809 JURISDICTION.

6 7 A court of this state has jurisdiction to appoint a
6 8 guardian or issue a protective order for a respondent if any
6 9 of the following apply:

6 10 1. This state is the respondent's home state.

6 11 2. This state is a significant-connection state and on the
6 12 date the petition is filed, any of the following apply:

6 13 a. The respondent does not have a home state or a court of
6 14 the respondent's home state has declined to exercise
6 15 jurisdiction because this state is a more appropriate forum.

6 16 b. The respondent has a home state, a petition for an
6 17 appointment or order is not pending in a court of that state
6 18 or another significant-connection state, and, before the court
6 19 makes the appointment or issues the order all of the following
6 20 apply:

6 21 (1) A petition for an appointment or order is not filed in
6 22 the respondent's home state.

6 23 (2) An objection to the court's jurisdiction is not filed
6 24 by a person required to be notified of the proceeding.

6 25 (3) The court in this state concludes that it is an
6 26 appropriate forum under the factors set forth in section
6 27 633.812.

6 28 3. Either of the following apply:

6 29 a. This state does not have jurisdiction under either
6 30 subsection 1 or 2, the respondent's home state and all
6 31 significant-connection states have declined to exercise
6 32 jurisdiction because this state is the more appropriate forum,
6 33 and jurisdiction in this state is consistent with the
6 34 Constitution of the State of Iowa and the Constitution of the
6 35 United States.

7 1 b. The requirements for special jurisdiction under section
7 2 633.810 are met.

7 3 Sec. 11. NEW SECTION. 633.810 SPECIAL JURISDICTION.

7 4 1. A court of this state lacking jurisdiction under
7 5 section 633.809 has special jurisdiction to do any of the
7 6 following:

7 7 a. Appoint a guardian in an emergency for a period not to
7 8 exceed ninety days for a respondent who is physically present
7 9 in this state.

7 10 b. Issue a protective order with respect to real or
7 11 tangible personal property located in this state.

7 12 c. Appoint a guardian or conservator for an incapacitated
7 13 or protected person for whom a provisional order to transfer
7 14 the proceeding from another state has been issued under
7 15 procedures similar to section 633.816.

7 16 2. If a petition for the appointment of a guardian in an
7 17 emergency is brought in this state and this state was not the
7 18 respondent's home state on the date the petition was filed,
7 19 the court shall dismiss the proceeding at the request of the
7 20 court of the home state, if any, whether dismissal is
7 21 requested before or after the emergency appointment.

7 22 Sec. 12. NEW SECTION. 633.811 EXCLUSIVE AND CONTINUING
7 23 JURISDICTION.

7 24 Except as otherwise provided in section 633.810, a court
7 25 that has appointed a guardian or issued a protective order
7 26 consistent with this chapter has exclusive and continuing
7 27 jurisdiction over the proceeding until terminated by the court
7 28 or the appointment or order expires by its own terms.

7 29 Sec. 13. NEW SECTION. 633.812 APPROPRIATE FORUM.

7 30 1. A court of this state with jurisdiction under section
7 31 633.809 to appoint a guardian or issue a protective order may
7 32 decline to exercise its jurisdiction if it determines at any
7 33 time that a court of another state is a more appropriate
7 34 forum.

7 35 2. If a court of this state declines to exercise its
8 1 jurisdiction under subsection 1, the court shall either
8 2 dismiss or stay the proceeding. The court may impose any
8 3 condition the court considers just and proper, including the
8 4 condition that a petition for the appointment of a guardian or
8 5 issuance of a protective order be filed promptly in another
8 6 state.

8 7 3. In determining whether it is an appropriate forum, the
8 8 court shall consider all of the following:

8 9 a. Any expressed preference of the respondent.

8 10 b. Whether abuse, neglect, or exploitation of the
8 11 respondent has occurred or is likely to occur and which state
8 12 could best protect the respondent from the abuse, neglect, or
8 13 exploitation.

8 14 c. The length of time the respondent was physically
8 15 present in or was a legal resident of this state or another
8 16 state.

8 17 d. The distance of the respondent from the court in each
8 18 state.

8 19 e. The financial circumstances of the respondent's estate.

8 20 f. The nature and location of the evidence.

8 21 g. The ability of the court in each state to decide the
8 22 issue expeditiously and the procedures necessary to present
8 23 evidence.

8 24 h. The familiarity of the court of each state with the
8 25 facts and issues in the proceeding.

8 26 i. If an appointment were to be made, the court's ability
8 27 to monitor the conduct of the guardian or conservator.

8 28 Sec. 14. NEW SECTION. 633.813 JURISDICTION DECLINED BY
8 29 REASON OF CONDUCT.

8 30 1. If at any time a court of this state determines that
8 31 the court acquired jurisdiction to appoint a guardian or issue
8 32 a protective order because of unjustifiable conduct, the court
8 33 may do any of the following:

8 34 a. Decline to exercise jurisdiction.

8 35 b. Exercise jurisdiction for the limited purpose of
9 1 fashioning an appropriate remedy to ensure the health, safety,
9 2 and welfare of the respondent or the protection of the
9 3 respondent's property or prevent a repetition of the
9 4 unjustifiable conduct, including staying the proceeding until
9 5 a petition for the appointment of a guardian or issuance of a
9 6 protective order is filed in a court of another state having
9 7 jurisdiction.

9 8 c. Continue to exercise jurisdiction after considering all
9 9 of the following:

9 10 (1) The extent to which the respondent and all persons
9 11 required to be notified of the proceedings have acquiesced in

9 12 the exercise of the court's jurisdiction.

9 13 (2) Whether it is a more appropriate forum than the court
9 14 of any other state under the factors set forth in section
9 15 633.812.

9 16 (3) Whether the court of any other state would have
9 17 jurisdiction under factual circumstances in substantial
9 18 conformity with the jurisdictional standards of section
9 19 633.809.

9 20 d. If a court of this state determines that the court
9 21 acquired jurisdiction to appoint a guardian or issue a
9 22 protective order because a party seeking to invoke its
9 23 jurisdiction engaged in unjustifiable conduct, the court may
9 24 assess necessary and reasonable expenses against that party,
9 25 including attorney fees, investigative fees, court costs,
9 26 communication expenses, witness fees and expenses, and travel
9 27 expenses. The court shall not assess fees, costs, or expenses
9 28 of any kind against this state or a governmental subdivision,
9 29 agency, or instrumentality of this state unless authorized by
9 30 law other than this division.

9 31 Sec. 15. NEW SECTION. 633.814 NOTICE OF PROCEEDING.

9 32 If a petition for the appointment of a guardian or issuance
9 33 of a protective order is brought in this state and this state
9 34 was not the respondent's home state on the date the petition
9 35 was filed, in addition to complying with the notice
10 1 requirements of this state, notice of the petition must be
10 2 given to those persons who would be entitled to notice of the
10 3 petition if a proceeding were brought in the respondent's home
10 4 state. The notice must be given in the same manner as notice
10 5 is required to be given in this state.

10 6 Sec. 16. NEW SECTION. 633.815 PROCEEDINGS IN MORE THAN
10 7 ONE STATE.

10 8 Except for a petition for the appointment of a guardian in
10 9 an emergency or issuance of a protective order limited to
10 10 property located in this state under section 633.810, if a
10 11 petition for the appointment of a guardian or issuance of a
10 12 protective order is filed in this state and in another state
10 13 and neither petition has been dismissed or withdrawn, the
10 14 following rules apply:

10 15 1. If the court in this state has jurisdiction under
10 16 section 633.809, it may proceed with the case unless a court
10 17 in another state acquires jurisdiction under provisions
10 18 similar to section 633.809 before the appointment or issuance
10 19 of the order.

10 20 2. If the court in this state does not have jurisdiction
10 21 under section 633.809, whether at the time the petition is
10 22 filed or at any time before the appointment or issuance of the
10 23 order, the court shall stay the proceeding and communicate
10 24 with the court in the other state. If the court in the other
10 25 state has jurisdiction, the court in this state shall dismiss
10 26 the petition unless the court in the other state determines
10 27 that the court in this state is a more appropriate forum.

10 28 PART 3

10 29 TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

10 30 Sec. 17. NEW SECTION. 633.816 TRANSFER OF GUARDIANSHIP
10 31 OR CONSERVATORSHIP TO ANOTHER STATE.

10 32 1. A guardian or conservator appointed in this state may
10 33 petition the court to transfer the guardianship or
10 34 conservatorship to another state.

10 35 2. Notice of a petition under subsection 1 shall be given
11 1 to the persons that would be entitled to notice of a petition
11 2 in this state for the appointment of a guardian or
11 3 conservator.

11 4 3. On the court's own motion or on request of the guardian
11 5 or conservator, the incapacitated or protected person, or
11 6 other person required to be notified of the petition, the
11 7 court shall hold a hearing on a petition filed pursuant to
11 8 subsection 1.

11 9 4. The court shall issue an order provisionally granting a
11 10 petition to transfer a guardianship and shall direct the
11 11 guardian to petition for guardianship in the other state if
11 12 the court is satisfied that the guardianship will be accepted
11 13 by the court in the other state and the court finds all of the
11 14 following:

11 15 a. The incapacitated person is physically present in or is
11 16 reasonably expected to move permanently to the other state.

11 17 b. An objection to the transfer has not been made or, if
11 18 an objection has been made, the objector has not established
11 19 that the transfer would be contrary to the interests of the
11 20 incapacitated person.

11 21 c. Plans for care and services for the incapacitated
11 22 person in the other state are reasonable and sufficient.

11 23 5. The court shall issue a provisional order granting a
11 24 petition to transfer a conservatorship and shall direct the
11 25 conservator to petition for conservatorship in the other state
11 26 if the court is satisfied that the conservatorship will be
11 27 accepted by the court of the other state and the court finds
11 28 all of the following:

11 29 a. The protected person is physically present in or is
11 30 reasonably expected to move permanently to the other state, or
11 31 the protected person has a significant connection to the other
11 32 state considering the factors in section 633.807.

11 33 b. An objection to the transfer has not been made or, if
11 34 an objection has been made, the objector has not established
11 35 that the transfer would be contrary to the interests of the
12 1 protected person.

12 2 c. Adequate arrangements will be made for management of
12 3 the protected person's property.

12 4 6. The court shall issue a final order confirming the
12 5 transfer and terminating the guardianship or conservatorship
12 6 upon its receipt of all of the following:

12 7 a. A provisional order accepting the proceeding from the
12 8 court to which the proceeding is to be transferred which is
12 9 issued under provisions similar to section 633.817.

12 10 b. The documents required to terminate a guardianship or
12 11 conservatorship in this state.

12 12 Sec. 18. NEW SECTION. 633.817 ACCEPTING GUARDIANSHIP OR
12 13 CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE.

12 14 1. To confirm transfer of a guardianship or
12 15 conservatorship transferred to this state under provisions
12 16 similar to section 633.816, the guardian or conservator must
12 17 petition the court in this state to accept the guardianship or
12 18 conservatorship. The petition must include a certified copy
12 19 of the other state's provisional order of transfer.

12 20 2. Notice of a petition under subsection 1 must be given
12 21 to those persons that would be entitled to notice if the
12 22 petition were to petition for the appointment of a guardian or
12 23 issuance of a protective order in both the transferring state
12 24 and this state. The notice must be given in the same manner
12 25 as notice is required to be given in this state.

12 26 3. On the court's own motion or on request of the guardian
12 27 or conservator, the incapacitated or protected person, or
12 28 other person required to be notified of the proceeding, the
12 29 court shall hold a hearing on a petition filed pursuant to
12 30 subsection 1.

12 31 4. The court shall issue an order provisionally granting a
12 32 petition filed under subsection 1 unless any of the following
12 33 applies:

12 34 a. An objection is made and the objector establishes that
12 35 transfer of the proceeding would be contrary to the interests
13 1 of the incapacitated or protected person.

13 2 b. The guardian or conservator is ineligible for
13 3 appointment in this state.

13 4 5. The court shall issue a final order accepting the
13 5 proceeding and appointing the guardian or conservator as
13 6 guardian or conservator in this state upon its receipt from
13 7 the court from which the proceeding is being transferred of a
13 8 final order issued under provisions similar to section 633.816
13 9 transferring the proceeding to this state.

13 10 6. Not later than ninety days after issuance of a final
13 11 order accepting transfer of a guardianship or conservatorship,
13 12 the court shall determine whether the guardianship or
13 13 conservatorship needs to be modified to conform to the laws of
13 14 this state.

13 15 7. Subject to subsections 4 and 6, in granting a petition
13 16 under this section, the court shall recognize a guardianship
13 17 or conservatorship order from the other state, including the
13 18 determination of the incapacitated or protected person's
13 19 incapacity and the appointment of the guardian or conservator.

13 20 8. The denial by a court of this state of a petition to
13 21 accept a guardianship or conservatorship transferred from
13 22 another state does not affect the ability of the guardian or
13 23 conservator to seek appointment as guardian or conservator in
13 24 this state under section 633.551 or 633.552, if the court has
13 25 jurisdiction to make an appointment other than by reason of
13 26 the provisional order of transfer.

13 27 PART 4

13 28 REGISTRATION AND RECOGNITION OF 13 29 ORDERS FROM OTHER STATES

13 30 Sec. 19. NEW SECTION. 633.818 REGISTRATION OF
13 31 GUARDIANSHIP ORDERS.

13 32 If a guardian has been appointed in another state and a
13 33 petition for the appointment of a guardian is not pending in

13 34 this state, the guardian appointed in the other state, after
13 35 giving notice to the appointing court of an intent to
14 1 register, may register the guardianship order in this state by
14 2 filing as a foreign judgment in a court, in any appropriate
14 3 county of this state, certified copies of the order and
14 4 letters of office.

14 5 Sec. 20. NEW SECTION. 633.819 REGISTRATION OF PROTECTIVE
14 6 ORDERS.

14 7 If a conservator has been appointed in another state and a
14 8 petition for a protective order is not pending in this state,
14 9 the conservator appointed in the other state, after giving
14 10 notice to the appointing court of an intent to register, may
14 11 register the protective order in this state by filing as a
14 12 foreign judgment in a court of this state, in any county in
14 13 which property belonging to the protected person is located,
14 14 certified copies of the order and letters of office and of any
14 15 bond.

14 16 Sec. 21. NEW SECTION. 633.820 EFFECT OF REGISTRATION.

14 17 1. Upon registration of a guardianship or protective order
14 18 from another state, the guardian or conservator may exercise
14 19 in this state all powers authorized in the order of
14 20 appointment except as prohibited under the laws of this state,
14 21 including maintaining actions and proceedings in this state
14 22 and, if the guardian or conservator is not a resident of this
14 23 state, subject to any conditions imposed upon nonresident
14 24 parties.

14 25 2. A court of this state may grant any relief available
14 26 under this division and other law of this state to enforce a
14 27 registered order.

14 28 PART 5
14 29 MISCELLANEOUS PROVISIONS

14 30 Sec. 22. NEW SECTION. 633.821 UNIFORMITY OF APPLICATION
14 31 AND CONSTRUCTION.

14 32 In applying and construing this uniform Act, consideration
14 33 must be given to the need to promote uniformity of the law
14 34 with respect to its subject matter among states that enact it.

14 35 Sec. 23. NEW SECTION. 633.822 RELATION TO ELECTRONIC
15 1 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

15 2 This division modifies, limits, and supersedes the federal
15 3 Electronic Signatures in Global and National Commerce Act, 15
15 4 U.S.C. } 7001, et seq., but does not modify, limit, or
15 5 supersede section 101(c) of that Act, 15 U.S.C. } 7001(c), or
15 6 authorize electronic delivery of any of the notices described
15 7 in section 103(b) of that Act, 15 U.S.C. } 7003(b).

15 8 Sec. 24. EFFECTIVE AND APPLICABILITY DATES.

15 9 1. Except as provided in subsection 2, this Act takes
15 10 effect July 1, 2010, and applies to guardianship and
15 11 protective proceedings in existence on or after that date.

15 12 2. Parts 1, 3, and 4 and sections 633.821 and 633.822
15 13 apply to proceedings begun before the effective date,
15 14 regardless of whether a guardianship or protective order has
15 15 been issued.

15 16 Sec. 25. CODE EDITOR DIRECTIVE. The Code editor is
15 17 directed to transfer division XIX of chapter 633, as enacted
15 18 in this Act, to division XV of chapter 633 and to transfer
15 19 division XV of chapter 633 to division XVI of chapter 633.

15 20 EXPLANATION

15 21 This bill creates the uniform adult guardianship and
15 22 protective proceedings Act relating to the establishment,
15 23 transfer, and recognition of guardianships and
15 24 conservatorships in multistate cases, and includes effective
15 25 date and applicability provisions.

15 26 PART 1. Part 1 of the bill contains definitions and
15 27 provisions relating to communications and cooperation between
15 28 courts in different states and the taking of testimony in
15 29 another state. The bill also provides that a court of this
15 30 state shall treat a foreign country as if it were a state of
15 31 the United States for purposes of the bill. The bill defines
15 32 "protective order" as an order appointing a conservator as
15 33 defined in Code section 633.3 of the Iowa probate Code and
15 34 defines "guardianship order" as an order appointing a guardian
15 35 as defined in Code section 633.3 of the Iowa probate Code.

16 1 PART 2. Part 2 of the bill provides a framework of
16 2 priority for determining when a particular court has
16 3 jurisdiction over adult guardianships and conservatorships for
16 4 an incapacitated or protected adult (respondent); the home
16 5 state, followed by a significant-connection state, followed by
16 6 other jurisdictions.

16 7 Part 2 of the bill defines "home state" as either the state
16 8 in which the adult has lived for at least six consecutive
16 9 months immediately before the beginning of the adult

16 10 guardianship or protective proceeding or the state in which
16 11 the adult was physically present for at least six consecutive
16 12 months ending within the six months prior to the filing of the
16 13 petition for a protective order or the appointment of a
16 14 guardian. A period of temporary absence in either situation
16 15 is counted as part of the six-month or other period. If there
16 16 is no home state or the court in the home state declines to
16 17 exercise jurisdiction, the bill provides that jurisdiction is
16 18 appropriate in a state in which the respondent has a
16 19 significant connection. In determining whether a respondent
16 20 has a significant connection with a particular state, the
16 21 court must consider the location of the respondent's family,
16 22 the length of time the respondent was physically present in
16 23 the state and the duration of any absence, the location of the
16 24 respondent's property, and the extent to which the respondent
16 25 has ties to the state (voting, filing tax returns, driver's
16 26 license, receipt of services). Another state may have
16 27 jurisdiction if the respondent does not have a home state or a
16 28 significant-connection state or the respondent's home state
16 29 and all significant-connection states have refused to exercise
16 30 jurisdiction because another state is more appropriate.

16 31 Part 2 of the bill provides that regardless of whether a
16 32 court in the state where the respondent is currently
16 33 physically present has jurisdiction, the court has special
16 34 jurisdiction to appoint a guardian in an emergency and a court
16 35 in a state where a respondent's real or tangible personal
17 1 property is located has jurisdiction to appoint a conservator
17 2 or issue another type of protective order with respect to that
17 3 property. A court also has special jurisdiction to consider a
17 4 petition to accept the transfer of an already existing
17 5 guardianship or conservatorship from another state under the
17 6 transfer provisions of part 3 of the bill.

17 7 Part 2 of the bill provides that once a guardian or
17 8 conservator is appointed or other protective order is issued,
17 9 the court's jurisdiction continues until the proceeding is
17 10 terminated by the court or the appointment or order expires by
17 11 its own terms.

17 12 Part 2 of the bill authorizes a court to decline to
17 13 exercise jurisdiction if it determines that the court of
17 14 another state is a more appropriate forum, and specifies the
17 15 factors to be taken into account in making this determination.

17 16 Part 2 of the bill authorizes a court that obtained
17 17 jurisdiction as a result of unjustifiable conduct by a party
17 18 to assess that party necessary and reasonable expenses,
17 19 including attorney fees, investigative fees, court costs,
17 20 communication expenses, witness fees and expenses, and travel
17 21 expenses.

17 22 Part 2 of the bill provides additional notice requirements
17 23 if a proceeding is brought in a state other than the
17 24 respondent's home state.

17 25 Part 2 of the bill provides a procedure for resolving
17 26 jurisdictional issues if petitions are pending in more than
17 27 one state.

17 28 PART 3. Part 3 of the bill provides a procedure for
17 29 transferring an existing guardianship or conservatorship from
17 30 one state to another state. The bill requires that the
17 31 guardian or conservator seeking the transfer must notify the
17 32 appropriate persons that would be entitled to notice. The
17 33 court hearing the petition for transfer must find that the
17 34 incapacitated or protected person is physically present in or
17 35 is reasonably expected to move permanently to the other state,
18 1 an objection to the transfer either has not been made or has
18 2 not established that the transfer would be contrary to the
18 3 interests of the incapacitated or protected person, and plans
18 4 for care and services for the incapacitated person in the
18 5 other state are reasonable and sufficient or adequate
18 6 arrangements will be made for management of the protected
18 7 person's property.

18 8 PART 4. Part 4 of the bill relates to the enforcement of
18 9 guardianship and conservatorship orders in different states
18 10 and establishes a procedure for registering an existing
18 11 guardianship or conservatorship in another state allowing a
18 12 guardian or conservator to act on behalf of the incapacitated
18 13 or protected person in the second state. The bill requires
18 14 the guardian or conservator to notify the original appointing
18 15 court about the guardian or conservator's intent to register
18 16 in another state. The bill allows the court receiving such
18 17 notice to question the rationale for the transfer and
18 18 communicate and coordinate with the court in the other state.

18 19 PART 5. Part 5 of the bill provides miscellaneous
18 20 provisions relating to the uniformity of application, the

18 21 federal electronic signatures Act, and applicability and
18 22 effective date provisions.

18 23 The bill takes effect July 1, 2010, and applies to
18 24 guardianship and protective proceedings in existence on or
18 25 after that date except a guardian or conservator appointed
18 26 prior to July 1, 2010, may petition to transfer the proceeding
18 27 to another state under part 3 of the bill and register and
18 28 enforce the order in other states pursuant to part 4 of the
18 29 bill.

18 30 LSB 1811SV 83

18 31 rh/rj/8