

SENATE FILE NO. SF0039

Uniform Adult Guardianship Jurisdiction Act.

Sponsored by: Senator(s) Ross and Representative(s)
Lubnau, Stubson and Wilson

A BILL

for

1 AN ACT relating to guardianship and conservators; creating
2 the Uniform Adult Guardianship and Protective Proceedings
3 Act; providing definitions; amending related provisions;
4 providing for applicability; and providing for an effective
5 date.

6

7 *Be It Enacted by the Legislature of the State of Wyoming:*

8

9 **Section 1.** W.S. 3-8-101 through 3-8-106, 3-8-201
10 through 3-8-209, 3-8-301 and 3-8-302, 3-8-401 through
11 3-8-403 and 3-8-501 and 3-8-502 are created to read:

12

13 CHAPTER 8

14 UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

15

16 ARTICLE 1

1 GENERAL PROVISIONS

2

3 **3-8-101. Short title.**

4

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

7

8 **3-8-102. Definitions.**

9

10 (a) As used in this act:

11

12 (i) "Adult" means an individual who has attained
13 eighteen (18) years of age;

14

15 (ii) "Conservator" means a person appointed by
16 the court to administer the property of an adult, including
17 a person appointed under W.S. 3-3-101 through 3-3-1106;

18

19 (iii) "Guardian" means a person appointed by the
20 court to make decisions regarding the person of an adult,
21 including a person appointed under W.S. 3-2-101 through
22 3-2-303;

23

1 (iv) "Guardianship order" means an order
2 appointing a guardian;

3

4 (v) "Guardianship proceeding" means a judicial
5 proceeding in which an order for the appointment of a
6 guardian is sought or has been issued;

7

8 (vi) "Incapacitated person" means an adult for
9 whom a guardian has been appointed;

10

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

15

16 (viii) "Protected person" means an adult for
17 whom a protective order has been issued;

18

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

22

1 (x) "Protective proceeding" means a judicial
2 proceeding in which a protective order is sought or has
3 been issued;

4
5 (xi) "Record" means information that is
6 inscribed on a tangible medium or that is stored in an
7 electronic or other medium and is retrievable in
8 perceivable form;

9
10 (xii) "Respondent" means an adult for whom a
11 protective order or the appointment of a guardian is
12 sought;

13
14 (xiii) "State" means a state of the United
15 States, the District of Columbia, Puerto Rico, the United
16 States Virgin Islands, a federally recognized Indian tribe,
17 or any territory or insular possession subject to the
18 jurisdiction of the United States;

19
20 (xiv) "This act" means W.S. 3-8-101 through
21 3-8-502.

22
23 **3-8-103. International application of act.**

24

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

4

5 **3-8-104. Communication between courts.**

6

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

14

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

18

19 **3-8-105. Cooperation between courts.**

20

21 (a) In a guardianship or protective proceeding in
22 this state, a court of this state may request the
23 appropriate court of another state to do any of the
24 following:

1

2 (i) Hold an evidentiary hearing;

3

4 (ii) Order a person in that state to produce
5 evidence or give testimony pursuant to procedures of that
6 state;

7

8 (iii) Order that an evaluation or assessment be
9 made of the respondent;

10

11 (iv) Order any appropriate investigation of a
12 person involved in a proceeding;

13

14 (v) Forward to the court of this state a
15 certified copy of the transcript or other record of a
16 hearing under paragraph (i) of this subsection or any other
17 proceeding, any evidence otherwise produced under paragraph
18 (ii) of this subsection, and any evaluation or assessment
19 prepared in compliance with an order under paragraph (iii)
20 or (iv) of this subsection;

21

22 (vi) Issue any order necessary to assure the
23 appearance in the proceeding of a person whose presence is

1 necessary for the court to make a determination, including
2 the respondent or the incapacitated or protected person;

3
4 (vii) Issue an order authorizing the release of
5 medical, financial, criminal or other relevant information
6 in that state, including protected health information as
7 defined in 45 C.F.R. 160.103, as amended.

8
9 (b) If a court of another state in which a
10 guardianship or protective proceeding is pending requests
11 assistance of the kind provided in subsection (a) of this
12 section, a court of this state has jurisdiction for the
13 limited purpose of granting the request or making
14 reasonable efforts to comply with the request.

15
16 **3-8-106. Taking testimony in another state.**

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

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

3

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

11

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

16

17 ARTICLE 2

18 JURISDICTION

19

20 **3-8-201. Definitions; significant connection factors.**

21

22 (a) As used in this article:

23

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

6
7 (ii) "Home state" means the state in which the
8 respondent was physically present, including any period of
9 temporary absence, for at least six (6) consecutive months
10 immediately before the filing of a petition for a
11 protective order or the appointment of a guardian; or if
12 none, the state in which the respondent was physically
13 present, including any period of temporary absence, for at
14 least six (6) consecutive months ending within the six (6)
15 months prior to the filing of the petition;

16
17 (iii) "Significant-connection state" means a
18 state, other than the home state, with which a respondent
19 has a significant connection other than mere physical
20 presence and in which substantial evidence concerning the
21 respondent is available.

22

1 (b) In determining under W.S. 3-8-203 and 3-8-301(e)
2 whether a respondent has a significant connection with a
3 particular state, the court shall consider:

4
5 (i) The location of the respondent's family and
6 other persons required to be notified of the guardianship
7 or protective proceeding;

8
9 (ii) The length of time the respondent at any
10 time was physically present in the state and the duration
11 of any absence;

12
13 (iii) The location of the respondent's property;
14 and

15
16 (iv) The extent to which the respondent has ties
17 to the state such as voting registration, state or local
18 tax return filing, vehicle registration, driver's license,
19 social relationship and receipt of services.

20
21 **3-8-202. Exclusive basis.**

22
23 This act provides the exclusive jurisdictional basis for a
24 court of this state to appoint a guardian or issue a

1 protective order for an adult.

2

3 **3-8-203. Jurisdiction.**

4

5 (a) A court of this state has jurisdiction to appoint
6 a guardian or issue a protective order for a respondent if:

7

8 (i) This state is the respondent's home state;

9

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

12

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

17

18 (B) The respondent has a home state, a
19 petition for an appointment or order is not pending in a
20 court of that state or another significant-connection
21 state, and before the court makes the appointment or issues
22 the order:

23

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

3

4 (II) An objection to the court's
5 jurisdiction is not filed by a person required to be
6 notified of the proceeding; and

7

8 (III) The court in this state
9 concludes that it is an appropriate forum under the factors
10 set forth in W.S. 3-8-206.

11

12 (iii) This state does not have jurisdiction
13 under either paragraph (i) or (ii) of this subsection, the
14 respondent's home state and all significant connection
15 states have declined to exercise jurisdiction because this
16 state is the more appropriate forum, and jurisdiction in
17 this state is consistent with the constitutions of this
18 state and the United States; or

19

20 (iv) The requirements for special jurisdiction
21 under W.S. 3-8-204 are met.

22

23 **3-8-204. Special jurisdiction.**

24

1 (a) A court of this state lacking jurisdiction under
2 W.S. 3-8-203(a)(i) through (iii) has special jurisdiction
3 to do any of the following:
4

5 (i) Appoint a guardian in an emergency for a
6 term not exceeding ninety (90) days for a respondent who is
7 physically present in this state;
8

9 (ii) Issue a protective order with respect to
10 real or tangible personal property located in this state;
11

12 (iii) Appoint a guardian or conservator for an
13 incapacitated or protected person for whom a provisional
14 order to transfer the proceeding from another state has
15 been issued under procedures similar to W.S. 3-8-301.
16

17 (b) If a petition for the appointment of a guardian
18 in an emergency is brought in this state and this state was
19 not the respondent's home state on the date the petition
20 was filed, the court shall dismiss the proceeding at the
21 request of the court of the home state, if any, whether
22 dismissal is requested before or after the emergency
23 appointment.
24

1 **3-8-205. Exclusive and continuing jurisdiction.**

2

3 Except as otherwise provided in W.S. 3-8-204, a court that
4 has appointed a guardian or issued a protective order
5 consistent with this act has exclusive and continuing
6 jurisdiction over the proceeding until it is terminated by
7 the court or the appointment or order expires by its own
8 terms.

9

10 **3-8-206. Appropriate forum.**

11

12 (a) A court of this state having jurisdiction under
13 W.S. 3-8-203 to appoint a guardian or issue a protective
14 order may decline to exercise its jurisdiction if it
15 determines at any time that a court of another state is a
16 more appropriate forum.

17

18 (b) If a court of this state declines to exercise its
19 jurisdiction under subsection (a) of this section, it shall
20 either dismiss or stay the proceeding. The court may impose
21 any condition the court considers just and proper,
22 including the condition that a petition for the appointment
23 of a guardian or issuance of a protective order be filed
24 promptly in another state.

1

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

5

6 (i) Any expressed preference of the respondent;

7

8 (ii) Whether abuse, neglect or exploitation of
9 the respondent has occurred or is likely to occur and which
10 state could best protect the respondent from the abuse,
11 neglect or exploitation;

12

13 (iii) The length of time the respondent was
14 physically present in or was a legal resident of this or
15 another state;

16

17 (iv) The distance of the respondent from the
18 court in each state;

19

20 (v) The financial circumstances of the
21 respondent's estate;

22

23 (vi) The nature and location of the evidence;

24

1 (vii) The ability of the court in each state to
2 decide the issue expeditiously and the procedures necessary
3 to present evidence;

4
5 (viii) The familiarity of the court of each
6 state with the facts and issues in the proceeding; and

7
8 (ix) If an appointment were made, the court's
9 ability to monitor the conduct of the guardian or
10 conservator.

11
12 **3-8-207. Jurisdiction declined by reason of conduct.**

13
14 (a) If at any time a court of this state determines
15 that it acquired jurisdiction to appoint a guardian or
16 issue a protective order because of unjustifiable conduct,
17 the court may:

18
19 (i) Decline to exercise jurisdiction;

20
21 (ii) Exercise jurisdiction for the limited
22 purpose of fashioning an appropriate remedy to ensure the
23 health, safety and welfare of the respondent or the
24 protection of the respondent's property or prevent a

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

5
6 (iii) Continue to exercise jurisdiction after
7 considering:

8
9 (A) The extent to which the respondent and
10 all persons required to be notified of the proceedings have
11 acquiesced in the exercise of the court's jurisdiction;

12
13 (B) Whether it is a more appropriate forum
14 than the court of any other state under the factors set
15 forth in W.S. 3-8-206(c); and

16
17 (C) Whether the court of any other state
18 would have jurisdiction under factual circumstances in
19 substantial conformity with the jurisdictional standards of
20 W.S. 3-8-203.

21
22 (b) If a court of this state determines that it
23 acquired jurisdiction to appoint a guardian or issue a
24 protective order because a party seeking to invoke its

1 jurisdiction engaged in unjustifiable conduct, it may
2 assess against that party necessary and reasonable
3 expenses, including attorney's fees, investigative fees,
4 court costs, communication expenses, witness fees and
5 expenses and travel expenses. The court may not assess
6 fees, costs or expenses of any kind against this state or a
7 governmental subdivision, agency or instrumentality of this
8 state unless authorized by law other than this act.

9

10 **3-8-208. Notice of proceeding.**

11

12 If a petition for the appointment of a guardian or issuance
13 of a protective order is brought in this state and this
14 state was not the respondent's home state on the date the
15 petition was filed, in addition to complying with the
16 notice requirements of this state, notice of the petition
17 shall be given to any person who would be entitled to
18 notice of the petition if a proceeding were brought in the
19 respondent's home state. The notice shall be given in the
20 same manner as notice is required to be given in this
21 state.

22

23 **3-8-209. Proceedings in more than one state.**

24

1 (a) Except for a petition for the appointment of a
2 guardian in an emergency or issuance of a protective order
3 limited to property located in this state under W.S.
4 3-8-204(a)(i) or (ii), if a petition for the appointment of
5 a guardian or issuance of a protective order is filed in
6 this state and in another state and neither petition has
7 been dismissed or withdrawn, the following rules shall
8 apply:

9
10 (i) If the court in this state has jurisdiction
11 under W.S. 3-8-203, it may proceed with the case unless a
12 court in another state acquires jurisdiction under
13 provisions similar to that section before the appointment
14 or issuance of the order;

15
16 (ii) If the court in this state does not have
17 jurisdiction under W.S. 3-8-203, whether at the time the
18 petition is filed or at any time before the appointment or
19 issuance of the order, the court shall stay the proceeding
20 and communicate with the court in the other state. If the
21 court in the other state has jurisdiction, the court in
22 this state shall dismiss the petition unless the court in
23 the other state determines that the court in this state is
24 a more appropriate forum.

1

2

ARTICLE 3

3

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

4

5

**3-8-301. Transfer of guardianship or conservatorship
to another state.**

6

7

8

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

10

11

12

(b) Notice of a petition under subsection (a) of this
section shall be given to any person that would be entitled
to notice of a petition in this state for the appointment
of a guardian or conservator.

15

16

17

(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) of this section.

21

22

23

(d) The court shall issue an order provisionally
granting a petition to transfer a guardianship and shall

24

1 direct the guardian to petition for guardianship in the
2 other state if the court is satisfied that the guardianship
3 will be accepted by the court in the other state and the
4 court finds that:

5

6 (i) The incapacitated person is physically
7 present in or is reasonably expected to move permanently to
8 the other state;

9

10 (ii) An objection to the transfer has not been
11 made or, if an objection has been made, the objector has
12 not established that the transfer would be contrary to the
13 interests of the incapacitated person; and

14

15 (iii) Plans for care and services for the
16 incapacitated person in the other state are reasonable and
17 sufficient.

18

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

1

2 (i) The protected person is physically present
3 in or is reasonably expected to move permanently to the
4 other state, or the protected person has a significant
5 connection to the other state considering the factors in
6 W.S. 3-8-201(b);

7

8 (ii) An objection to the transfer has not been
9 made or, if an objection has been made, the objector has
10 not established that the transfer would be contrary to the
11 interests of the protected person; and

12

13 (iii) Adequate arrangements will be made for
14 management of the protected person's property.

15

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

19

20 (i) A provisional order accepting the proceeding
21 from the court to which the proceeding is to be transferred
22 which is issued under provisions similar to W.S. 3-8-302;
23 and

24

1 (ii) The documents required to terminate a
2 guardianship or conservatorship in this state.

3

4 **3-8-302. Accepting guardianship or conservatorship**
5 **transferred from another state.**

6

7 (a) To confirm transfer of a guardianship or
8 conservatorship transferred to this state under provisions
9 similar to W.S. 3-8-301, the guardian or conservator shall
10 petition the court in this state to accept the guardianship
11 or conservatorship. The petition shall include a certified
12 copy of the other state's provisional order of transfer.

13

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

21

22 (c) On the court's own motion or on request of the
23 guardian or conservator, the incapacitated or protected
24 person or other person required to be notified of the

1 proceeding, the court shall hold a hearing on a petition
2 filed pursuant to subsection (a) of this section.

3

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

7

8 (i) An objection is made and the objector
9 establishes that transfer of the proceeding would be
10 contrary to the interests of the incapacitated or protected
11 person; or

12

13 (ii) The guardian or conservator is ineligible
14 for appointment in this state.

15

16 (e) The court shall issue a final order accepting the
17 proceeding and appointing the guardian or conservator as
18 guardian or conservator in this state upon its receipt from
19 the court from which the proceeding is being transferred of
20 a final order issued under provisions similar to W.S.
21 3-8-301 transferring the proceeding to this state.

22

23 (f) Not later than ninety (90) days after issuance of
24 a final order accepting transfer of a guardianship or

1 conservatorship, the court shall determine whether the
2 guardianship or conservatorship needs to be modified to
3 conform to the law of this state.

4
5 (g) In granting a petition under this section, the
6 court shall recognize a guardianship or conservatorship
7 order from the other state, including the determination of
8 the incapacitated or protected person's incapacity and the
9 appointment of the guardian or conservator.

10
11 (h) The denial by a court of this state of a petition
12 to accept a guardianship or conservatorship transferred
13 from another state shall not affect the ability of the
14 guardian or conservator to seek appointment as guardian or
15 conservator in this state under W.S. 3-2-101 through
16 3-3-1106 if the court has jurisdiction to make an
17 appointment other than by reason of the provisional order
18 of transfer.

19
20 ARTICLE 4
21 REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

22
23 **3-8-401. Registration of guardianship orders.**

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

9

10 **3-8-402. Registration of protective orders.**

11

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

21

22 **3-8-403. Effect of registration.**

23

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

9
10 (b) A court of this state may grant any relief
11 available under this act and other law of this state to
12 enforce a registered order.

13
14 ARTICLE 5

15 MISCELLANEOUS PROVISIONS

16
17 **3-8-501. Application.**

18
19 (a) This act shall apply to any guardianship and
20 protective proceeding begun on or after the effective date
21 of this act.

22
23 (b) Articles 1, 3 and 4 of this act shall apply to
24 any proceeding begun before the effective date of this act,

1 regardless of whether a guardianship or protective order
2 has been issued.

3

4 **3-8-502. Relation to electronic signatures in global**
5 **and national commerce act.**

6

7 This act modifies, limits and supersedes the federal
8 Electronic Signatures in Global and National Commerce Act,
9 15 U.S.C. section 7001, et seq., but does not modify, limit
10 or supersede section 101(c) of that act, 15 U.S.C. section
11 7001(c) or authorize electronic delivery of any of the
12 notices described in section 103(b) of that act, 15 U.S.C.
13 section 7003(b).

14

15 **Section 2.** W.S. 3-1-102 and 3-2-101 by creating a new
16 subsection (c) are amended to read:

17

18 **3-1-102. Consent to jurisdiction.**

19

20 (a) Except as provided by subsection (b) of this
21 section, by accepting appointment, a guardian or
22 conservator submits personally to the jurisdiction of the
23 court in any proceeding relating to the guardianship or
24 conservatorship that may be instituted by any interested

1 person. Notice of any proceeding shall be delivered to the
2 guardian or conservator or mailed to him by certified mail
3 at his address listed in the court records and to his
4 address as then known to the petitioner.

5
6 (b) In any matter concerning an adult, the provisions
7 of chapter 8 of this title shall apply and shall supersede
8 the terms of subsection (a) of this section.

9
10 **3-2-101. Petition for appointment of guardian.**

11
12 (c) In any matter concerning an adult, the provisions
13 of chapter 8 of this title shall apply for the purposes of
14 establishing jurisdiction over the matter.

15
16 **Section 3.** This act is effective July 1, 2013.

17
18 (END)