



HOUSE BILL 817: Enact Uniform Law on Adult Guardianship.

2016-2017 General Assembly

Committee:	Senate Judiciary II	Date:	May 25, 2016
Introduced by:	Reps. R. Turner, Meyer, Farmer-Butterfield, Hurley	Prepared by:	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition H817-CSTJ-65		

SUMMARY: *The Proposed Committee Substitute (PCS) for House Bill 817 would enact the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act in North Carolina. The PCS would modify proposed new G.S. 35B-10, "Jurisdiction," to reflect that a court of this State has jurisdiction to appoint a guardian or issue a protective order if any (was, all) of the criteria in the statute are met, and would change the effective date of the act to December 1, 2016.*

BILL ANALYSIS:

The following statement of Benjamin Orzeske, Legislative Counsel for the Uniform Law Commission, National Conference of Commissioners on Uniform State Laws, summarizes the bill:

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) was approved by the Uniform Law Commission in the summer of 2007. To date, forty states, the District of Columbia, and Puerto Rico have enacted this uniform legislation.

UAGPPJA is a narrowly focused act that will not change the substantive guardianship law of North Carolina. Rather it will address the interstate jurisdictional issues that can occur in our modern mobile society. Specifically, UAGPPJA addresses three problems that impact guardianship law: multiple appointments, transferability, and interstate recognition of orders.

1. Multiple Appointments.

The first objective of the Act is to create a jurisdictional priority that solves the increasingly common problem of two or more states appointing a guardian for the same person. Disputes occur most often when family members who live in different states disagree about the person appointed as guardian or the terms of the guardianship. They are more common when the protected person's estate has significant assets.

Under older statutes, a person's mere presence in the state was sufficient reason for a court to exercise jurisdiction over that person. Therefore, before UAGPPJA it was relatively easy for someone who did not like the terms of an existing guardianship to bring the protected person to another state and petition a second court for guardianship under new terms. In the worst cases, courts issued conflicting orders and families litigated the dispute for years, at great cost to the estate and great personal hardship to the person who the courts intended to protect in the first place.

UAGPPJA provides a solution by setting up a jurisdictional hierarchy to govern adult guardianships. The hierarchy is based on the same rules that North Carolina applies to child custody disputes (see G.S. 50A-101 et seq.): the court of the protected person's "home state" will have first priority to exercise its jurisdiction. The home state is defined as the state in which the person to be protected was last

Karen Cochrane-Brown
Director



H 8 1 7 - S M T J - 1 4 7 C S T J - 6 5 - V - 2

Legislative Analysis
Division
919-733-2578

House PCS 817

Page 2

physically present for at least six consecutive months immediately before the commencement of the guardianship proceeding. Said another way, a person's home state has primary jurisdiction to appoint a guardian for the person and this priority continues for up to six months after the person moves to another state.

A "significant-connection" state has jurisdiction if an individual has not had a home state within the past six months or if the home state declines jurisdiction because the other state court is a more appropriate venue. Lastly, if an individual's home state and all significant-connection states decline jurisdiction, a court of another state can exercise jurisdiction over the person. Exceptions apply for short-term orders in case of an emergency.

Once a court has jurisdiction over the guardianship proceeding, the jurisdiction continues until the proceeding is terminated or transferred. Continuing jurisdiction will reduce the number of multiple orders, reduce litigation costs, and provide individuals with orders that will be valid and accepted throughout the country.

2. Transferability.

The second objective of UAGPPJA is to provide procedures for transferring guardianships between states. Most often, this procedure is used when the guardian moves to another state with the protected person. Before UAGPPJA, few states had procedures in place for transferring guardianships. Therefore, a family that might already be struggling to provide care for a loved one would be forced to start over and apply for appointment of a guardian or conservator in the new state – an expensive and time-consuming process.

UAGPPJA solves this problem by providing a method for courts of different states to cooperate on transfers. The guardian or conservator first requests a transfer order from the transferring state's court, contingent on acceptance by the other state's court. All interested parties must be notified of the proposed transfer. The guardian then presents the transfer order to the court that will oversee the guardianship in the accepting state. If that court agrees to accept it, both courts will issue final orders completing the transfer.

The accepting state's court must conduct a hearing within 90 days to ensure the terms of the original guardianship comply with all laws of the accepting state. The court also has discretion to refuse a transfer and require a new proceeding when appropriate.

Interstate Recognition.

Finally, in order to facilitate out-of-state enforcement of guardianship orders, UAGPPJA allows a guardian to register the order in other states in the same way any other foreign court judgment can be registered for enforcement. This procedure is most often used either because the protected person owned property in more than one state, or because the protected person lives close to a state border and receives care across a state line. Upon registration with the court, the guardian may exercise all powers authorized in the order of appointment except those prohibited under the laws of the registering state. The registration procedure reduces the likelihood that a state will refuse to recognize a guardian's authority and require the filing of a new guardianship petition.

Conclusion.

Many of the issues and concepts presented in this Act will be familiar to North Carolina courts and attorneys because UAGPPJA has already been widely adopted across the United States. By enacting HB 817, the General Assembly can bring North Carolina law into conformity with the law of its neighboring states and provide an efficient and effective process for interstate cooperation between courts.

House PCS 817

Page 3

The drafting committee for the act benefited from the involvement and support of the AARP, the Alzheimer's Association, the American Bar Association Commission on Law and Aging, the National Academy of Elder Law Attorneys, the National College of Probate Judges, and the National Guardianship Association. Each of these groups endorses this Act and is active in promoting nationwide enactment. The support of this diverse group of attorneys, guardians, judges, and advocates serves as strong evidence that UAGPPJA can help solve many of the complex jurisdictional issues courts face in Texas and throughout the country.

EFFECTIVE DATE: This act becomes effective December 1, 2016, and applies to multi-state guardianship and protective proceedings initiated on or after that date. Articles 1, 3, and 4 of Chapter 35B of the General Statutes, as enacted by Section 1 of this act, and G.S. 35B-22 and G.S. 35B-23, as enacted by Section 1 of this act, apply to proceedings initiated prior to December 1, 2016, regardless of whether a guardianship or protective order has been issued.

Benjamin Orzeske, Legislative Counsel to the Uniform Law Commission, substantially contributed to this summary.