

THE HOUSE OF REPRESENTATIVES
Thursday, March 25, 2010

Committee Substitute for
ENGROSSED
Senate Bill No. 2204

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 2204 - By:
IVESTER AND JOHNSON (CONSTANCE) of the Senate and DANK AND NELSON of
the House.

[guardian and ward - creating Uniform Adult Guardianship and Protective
Proceedings Jurisdiction Act - codification -
effective date]

~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

ARTICLE 1

GENERAL PROVISIONS

1 SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 3-301 of Title 30, unless there is created a duplication in numbering,
3 reads as follows:

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

6 SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma
7 Statutes as Section 3-302 of Title 30, unless there is created a duplication in numbering,
8 reads as follows:

1 As used in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction
2 Act:

3 (1) “Adult” means an individual who has attained eighteen (18) years of age;

4 (2) “Conservator” means a person appointed by the court to administer the property
5 of an adult;

6 (3) “Guardian” means a person appointed by the court to make decisions regarding
7 the person of an adult;

8 (4) “Guardianship order” means an order appointing a guardian;

9 (5) “Guardianship proceeding” means a judicial proceeding in which an order for
10 the appointment of a guardian is sought or has been issued;

11 (6) “Incapacitated person” means an adult for whom a guardian has been
12 appointed;

13 (7) “Party” means the respondent, petitioner, guardian, conservator, or any other
14 person allowed by the court to participate in a guardianship or protective proceeding;

15 (8) “Person”, except in the term incapacitated person or protected person, means an
16 individual, corporation, business trust, estate, trust, partnership, limited liability
17 company, association, joint venture, public corporation, government or governmental
18 subdivision, agency, or instrumentality, or any other legal or commercial entity;

19 (9) “Protected person” means an adult for whom a protective order has been issued;

20 (10) “Protective order” means an order appointing a conservator or other order
21 related to management of an adult’s property;

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

3 (12) "Record" means information that is inscribed on a tangible medium or that is
4 stored in an electronic or other medium and is retrievable in perceivable form;

5 (13) "Respondent" means an adult for whom a protective order or the appointment
6 of a guardian is sought; and

7 (14) "State" means a state of the United States, the District of Columbia, Puerto
8 Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any
9 territory or insular possession subject to the jurisdiction of the United States.

10 SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma
11 Statutes as Section 3-303 of Title 30, unless there is created a duplication in numbering,
12 reads as follows:

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

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

20 SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma
21 Statutes as Section 3-304 of Title 30, unless there is created a duplication in numbering,
22 reads as follows:

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

3 (1) Hold an evidentiary hearing;

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

6 (3) Order that an evaluation or assessment be made of the respondent;

7 (4) Order any appropriate investigation of a person involved in a proceeding;

8 (5) Forward to the court of this state a certified copy of the transcript or other
9 record of a hearing under paragraph (1) of this subsection or any other proceeding, any
10 evidence otherwise produced under paragraph (2) of this subsection, and any evaluation
11 or assessment prepared in compliance with an order under paragraph (3) or (4) of this
12 subsection;

13 (6) Issue any order necessary to assure the appearance in the proceeding of a
14 person whose presence is necessary for the court to make a determination, including the
15 respondent or the incapacitated or protected person;

16 (7) Issue an order authorizing the release of medical, financial, criminal, or other
17 relevant information in that state, including protected health information as defined in
18 45 C.F.R. Section 164.504, as amended.

19 (b) If a court of another state in which a guardianship or protective proceeding is
20 pending requests assistance of the kind provided in subsection (a) of this section, a court
21 of this state has jurisdiction for the limited purpose of granting the request or making
22 reasonable efforts to comply with the request.

1 SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 3-305 of Title 30, unless there is created a duplication in numbering,
3 reads as follows:

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

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

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

17 ARTICLE 2

18 JURISDICTION

19 SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma
20 Statutes as Section 3-306 of Title 30, unless there is created a duplication in numbering,
21 reads as follows:

22 (a) In this article:

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

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

11 (3) "Significant connection state" means a state, other than the home state, with
12 which a respondent has a significant connection other than mere physical presence and
13 in which substantial evidence concerning the respondent is available.

14 (b) In determining under Section 8 and subsection (e) of Section 15 of this act
15 whether a respondent has a significant connection with a particular state, the court shall
16 consider:

17 (1) The location of the respondent's family and other persons required to be notified
18 of the guardianship or protective proceeding;

19 (2) The length of time the respondent at any time was physically present in the
20 state and the duration of any absence;

21 (3) The location of the respondent's property; and

1 (4) The extent to which the respondent has ties to the state such as voting
2 registration, state or local tax return filing, vehicle registration, driver's license, social
3 relationship, and receipt of services.

4 SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma
5 Statutes as Section 3-307 of Title 30, unless there is created a duplication in numbering,
6 reads as follows:

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

9 SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma
10 Statutes as Section 3-308 of Title 30, unless there is created a duplication in numbering,
11 reads as follows:

12 A court of this state has jurisdiction to appoint a guardian or issue a protective
13 order for a respondent if:

14 (1) This state is the respondent's home state;

15 (2) On the date the petition is filed, this state is a significant-connection state and:

16 (A) the respondent does not have a home state or a court of the
17 respondent's home state has declined to exercise jurisdiction because
18 this state is a more appropriate forum, or

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

- 1 (i) a petition for an appointment or order is not filed in the
2 respondent's home state,
3 (ii) an objection to the court's jurisdiction is not filed by a person
4 required to be notified of the proceeding, and
5 (iii) the court in this state concludes that it is an appropriate forum
6 under the factors set forth in Section 11 of this act;

7 (3) This state does not have jurisdiction under either paragraph (1) or (2) of this
8 subsection, the respondent's home state and all significant-connection states have
9 declined to exercise jurisdiction because this state is the more appropriate forum, and
10 jurisdiction in this state is consistent with the constitutions of this state and the United
11 States; or

12 (4) The requirements for special jurisdiction under Section 9 of this act are met.

13 SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma
14 Statutes as Section 3-309 of Title 30, unless there is created a duplication in numbering,
15 reads as follows:

16 (a) A court of this state lacking jurisdiction under paragraphs (1) through (3) of
17 Section 8 of this act has special jurisdiction to do any of the following:

18 (1) Appoint a guardian in an emergency for a term not to exceed ninety (90) days
19 for a respondent who is physically present in this state;

20 (2) Issue a protective order with respect to real or tangible personal property
21 located in this state;

1 (3) Appoint a guardian or conservator for an incapacitated or protected person for
2 whom a provisional order to transfer the proceeding from another state has been issued
3 under procedures similar to Section 15 of this act.

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

8 SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma
9 Statutes as Section 3-310 of Title 30, unless there is created a duplication in numbering,
10 reads as follows:

11 Except as otherwise provided in Section 9 of this act, a court that has appointed a
12 guardian or issued a protective order consistent with this act has exclusive and
13 continuing jurisdiction over the proceeding until it is terminated by the court or the
14 appointment or order expires by its own terms.

15 SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma
16 Statutes as Section 3-311 of Title 30, unless there is created a duplication in numbering,
17 reads as follows:

18 (a) A court of this state having jurisdiction under Section 8 of this act to appoint a
19 guardian or issue a protective order may decline to exercise its jurisdiction if it
20 determines at any time that a court of another state is a more appropriate forum.

21 (b) If a court of this state declines to exercise its jurisdiction under subsection (a) of
22 this section, it shall either dismiss or stay the proceeding. The court may impose any

1 condition the court considers just and proper, including the condition that a petition for
2 the appointment of a guardian or issuance of a protective order be filed promptly in
3 another state.

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

6 (1) Any expressed preference of the respondent;

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

10 (3) The length of time the respondent was physically present in or was a legal
11 resident of this or another state;

12 (4) The distance of the respondent from the court in each state;

13 (5) The financial circumstances of the respondent's estate;

14 (6) The nature and location of the evidence;

15 (7) The ability of the court in each state to decide the issue expeditiously and the
16 procedures necessary to present evidence;

17 (8) The familiarity of the court of each state with the facts and issues in the
18 proceeding; and

19 (9) If an appointment were made, the court's ability to monitor the conduct of the
20 guardian or conservator.

1 SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 3-312 of Title 30, unless there is created a duplication in numbering,
3 reads as follows:

4 (a) If at any time a court of this state determines that it acquired jurisdiction to
5 appoint a guardian or issue a protective order because of unjustifiable conduct, the court
6 may:

7 (1) Decline to exercise jurisdiction;

8 (2) Exercise jurisdiction for the limited purpose of fashioning an appropriate
9 remedy to ensure the health, safety, and welfare of the respondent or the protection of
10 the respondent's property or prevent a repetition of the unjustifiable conduct, including
11 staying the proceeding until a petition for the appointment of a guardian or issuance of a
12 protective order is filed in a court of another state having jurisdiction; or

13 (3) Continue to exercise jurisdiction after considering:

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

17 (B) whether it is a more appropriate forum than the court of any other
18 state under the factors set forth in subsection (c) of Section 11 of this
19 act; and

20 (C) whether the court of any other state would have jurisdiction under
21 factual circumstances in substantial conformity with the jurisdictional
22 standards of Section 8 of this act.

1 (b) If a court of this state determines that it acquired jurisdiction to appoint a
2 guardian or issue a protective order because a party seeking to invoke its jurisdiction
3 engaged in unjustifiable conduct, it may assess against that party necessary and
4 reasonable expenses, including attorney fees, investigative fees, court costs,
5 communication expenses, witness fees and expenses, and travel expenses. The court may
6 not assess fees, costs, or expenses of any kind against this state or a governmental
7 subdivision, agency, or instrumentality of this state unless authorized by law other than
8 this act.

9 SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma
10 Statutes as Section 3-313 of Title 30, unless there is created a duplication in numbering,
11 reads as follows:

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

18 SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma
19 Statutes as Section 3-314 of Title 30, unless there is created a duplication in numbering,
20 reads as follows:

21 Except for a petition for the appointment of a guardian in an emergency or issuance
22 of a protective order limited to property located in this state under paragraph (1) or (2) of

1 subsection (a) of Section 9 of this act, if a petition for the appointment of a guardian or
2 issuance of a protective order is filed in this state and in another state and neither
3 petition has been dismissed or withdrawn, the following rules apply:

4 (1) If the court in this state has jurisdiction under Section 8 of this act, it may
5 proceed with the case unless a court in another state acquires jurisdiction under
6 provisions similar to Section 8 of this act before the appointment or issuance of the order.

7 (2) If the court in this state does not have jurisdiction under Section 8 of this act,
8 whether at the time the petition is filed or at any time before the appointment or
9 issuance of the order, the court shall stay the proceeding and communicate with the court
10 in the other state. If the court in the other state has jurisdiction, the court in this state
11 shall dismiss the petition unless the court in the other state determines that the court in
12 this state is a more appropriate forum.

13 ARTICLE 3

14 TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

15 SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma
16 Statutes as Section 3-315 of Title 30, unless there is created a duplication in numbering,
17 reads as follows:

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

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

1 (c) On the court's own motion or on request of the guardian or conservator, the
2 incapacitated or protected person, or other person required to be notified of the petition,
3 the court shall hold a hearing on a petition filed pursuant to subsection (a) of this section.

4 (d) The court shall issue an order provisionally granting a petition to transfer a
5 guardianship and shall direct the guardian to petition for guardianship in the other state
6 if the court is satisfied that the guardianship will be accepted by the court in the other
7 state and the court finds that:

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

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

13 (3) Plans for care and services for the incapacitated person in the other state are
14 reasonable and sufficient.

15 (e) The court shall issue a provisional order granting a petition to transfer a
16 conservatorship and shall direct the conservator to petition for conservatorship in the
17 other state if the court is satisfied that the conservatorship will be accepted by the court
18 of the other state and the court finds that:

19 (1) The protected person is physically present in or is reasonably expected to move
20 permanently to the other state, or the protected person has a significant connection to
21 the other state considering the factors in subsection (b) of Section 6 of this act;

1 (2) An objection to the transfer has not been made or, if an objection has been
2 made, the objector has not established that the transfer would be contrary to the
3 interests of the protected person; and

4 (3) Adequate arrangements will be made for management of the protected person's
5 property.

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

8 (1) A provisional order accepting the proceeding from the court to which the
9 proceeding is to be transferred which is issued under provisions similar to Section 16 of
10 this act; and

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

13 SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma
14 Statutes as Section 3-316 of Title 30, unless there is created a duplication in numbering,
15 reads as follows:

16 (a) To confirm transfer of a guardianship or conservatorship transferred to this
17 state under provisions similar to Section 15 of this act, the guardian or conservator shall
18 petition the court in this state to accept the guardianship or conservatorship. The
19 petition shall include a certified copy of the other state's provisional order of transfer.

20 (b) Notice of a petition under subsection (a) of this section shall be given to those
21 persons that would be entitled to notice if the petition were a petition for the
22 appointment of a guardian or issuance of a protective order in both the transferring state

1 and this state. The notice shall be given in the same manner as notice is required to be
2 given in this state.

3 (c) On the court's own motion or on request of the guardian or conservator, the
4 incapacitated or protected person, or other person required to be notified of the
5 proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (a) of
6 this section.

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

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

11 (2) The guardian or conservator is ineligible for appointment in this state.

12 (e) The court shall issue a final order accepting the proceeding and appointing the
13 guardian or conservator as guardian or conservator in this state upon its receipt from the
14 court from which the proceeding is being transferred of a final order issued under
15 provisions similar to Section 15 of this act transferring the proceeding to this state.

16 (f) Not later than ninety (90) days after issuance of a final order accepting transfer
17 of a guardianship or conservatorship, the court shall determine whether the
18 guardianship or conservatorship needs to be modified to conform to the law of this state.

19 (g) In granting a petition under this section, the court shall recognize a
20 guardianship or conservatorship order from the other state, including the determination
21 of the incapacitated or protected person's incapacity and the appointment of the guardian
22 or conservator.

1 (h) The denial by a court of this state of a petition to accept a guardianship or
2 conservatorship transferred from another state does not affect the ability of the guardian
3 or conservator to seek appointment as guardian or conservator in this state under
4 Section 3-101 of Title 30 of the Oklahoma Statutes if the court has jurisdiction to make
5 an appointment other than by reason of the provisional order of transfer.

6 ARTICLE 4

7 REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

8 SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma
9 Statutes as Section 3-317 of Title 30, unless there is created a duplication in numbering,
10 reads as follows:

11 If a guardian has been appointed in another state and a petition for the
12 appointment of a guardian is not pending in this state, the guardian appointed in the
13 other state, after giving notice to the appointing court of an intent to register, may
14 register the guardianship order in this state by filing as a foreign judgment in a court, in
15 any appropriate county of this state, certified copies of the order and letters of office.

16 SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma
17 Statutes as Section 3-318 of Title 30, unless there is created a duplication in numbering,
18 reads as follows:

19 If a conservator has been appointed in another state and a petition for a protective
20 order is not pending in this state, the conservator appointed in the other state, after
21 giving notice to the appointing court of an intent to register, may register the protective
22 order in this state by filing as a foreign judgment in a court of this state, in any county in

1 which property belonging to the protected person is located, certified copies of the order
2 and letters of office and of any bond.

3 SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma
4 Statutes as Section 3-319 of Title 30, unless there is created a duplication in numbering,
5 reads as follows:

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

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

13 ARTICLE 5

14 MISCELLANEOUS PROVISIONS

15 SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma
16 Statutes as Section 3-320 of Title 30, unless there is created a duplication in numbering,
17 reads as follows:

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

1 SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 3-321 of Title 30, unless there is created a duplication in numbering,
3 reads as follows:

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

9 SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma
10 Statutes as Section 3-322 of Title 30, unless there is created a duplication in numbering,
11 reads as follows:

12 (a) This act applies to guardianship and protective proceedings begun on or after
13 the effective date of this act.

14 (b) Articles 1, 3, and 4 and Sections 21 and 22 of this act apply to proceedings
15 begun before the effective date of this act, regardless of whether a guardianship or
16 protective order has been issued.

17 SECTION 23. This act shall become effective November 1, 2010.

18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03-24-10 - DO PASS,
19 As Amended and Coauthored.