

SB 2204

THE STATE SENATE
Monday, February 22, 2010

Senate Bill No. 2204
As Amended

SENATE BILL NO. 2204 - By: Ivester of the Senate and Dank of the House.

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

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

ARTICLE 1

GENERAL PROVISIONS

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

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

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

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

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

- 1 (2) "Conservator" means a person appointed by the court to
2 administer the property of an adult;
- 3 (3) "Guardian" means a person appointed by the court to make
4 decisions regarding the person of an adult;
- 5 (4) "Guardianship order" means an order appointing a guardian;
- 6 (5) "Guardianship proceeding" means a judicial proceeding in
7 which an order for the appointment of a guardian is sought or has
8 been issued;
- 9 (6) "Incapacitated person" means an adult for whom a guardian
10 has been appointed;
- 11 (7) "Party" means the respondent, petitioner, guardian,
12 conservator, or any other person allowed by the court to participate
13 in a guardianship or protective proceeding;
- 14 (8) "Person," except in the term incapacitated person or
15 protected person, means an individual, corporation, business trust,
16 estate, trust, partnership, limited liability company, association,
17 joint venture, public corporation, government or governmental
18 subdivision, agency, or instrumentality, or any other legal or
19 commercial entity;
- 20 (9) "Protected person" means an adult for whom a protective
21 order has been issued;
- 22 (10) "Protective order" means an order appointing a conservator
23 or other order related to management of an adult's property;

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

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

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

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

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

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

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

21 (a) A court of this state may communicate with a court in
22 another state concerning a proceeding arising under this act. The
23 court may allow the parties to participate in the communication.

1 Except as otherwise provided in subsection (b) of this section, the
2 court shall make a record of the communication. The record may be
3 limited to the fact that the communication occurred.

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

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

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

13 (1) Hold an evidentiary hearing;

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

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

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

20 (5) Forward to the court of this state a certified copy of the
21 transcript or other record of a hearing under paragraph (1) of this
22 subsection or any other proceeding, any evidence otherwise produced
23 under paragraph (2) of this subsection, and any evaluation or

1 assessment prepared in compliance with an order under paragraph (3)
2 or (4) of this subsection;

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

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

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

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

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

1 witness be taken in another state and may prescribe the manner in
2 which and the terms upon which the testimony is to be taken.

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

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

13 ARTICLE 2

14 JURISDICTION

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

18 (a) In this article:

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

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

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

13 (b) In determining under Section 9 and subsection (e) of
14 Section 16 of this act whether a respondent has a significant
15 connection with a particular state, the court shall consider:

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

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

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

22 (4) The extent to which the respondent has ties to the state
23 such as voting registration, state or local tax return filing,

1 vehicle registration, driver's license, social relationship, and
2 receipt of services.

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

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

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

12 A court of this state has jurisdiction to appoint a guardian or
13 issue a protective 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
16 significant-connection state and:

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

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

1 before the court makes the appointment or issues the
2 order:

- 3 (i) a petition for an appointment or order is not
4 filed in the respondent's home state,
- 5 (ii) an objection to the court's jurisdiction is not
6 filed by a person required to be notified of the
7 proceeding, and
- 8 (iii) the court in this state concludes that it is an
9 appropriate forum under the factors set forth in
10 Section 12 of this act;

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

17 (4) The requirements for special jurisdiction under Section 10
18 of this act are met.

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

1 (a) A court of this state lacking jurisdiction under paragraphs
2 (1) through (3) of Section 9 of this act has special jurisdiction to
3 do any of the following:

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

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

9 (3) Appoint a guardian or conservator for an incapacitated or
10 protected person for whom a provisional order to transfer the
11 proceeding from another state has been issued under procedures
12 similar to Section 16 of this act.

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

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

22 Except as otherwise provided in Section 10 of this act, a court
23 that has appointed a guardian or issued a protective order

1 consistent with this act has exclusive and continuing jurisdiction
2 over the proceeding until it is terminated by the court or the
3 appointment or order expires by its own terms.

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

7 (a) A court of this state having jurisdiction under Section 9
8 of this act to appoint a guardian or issue a protective order may
9 decline to exercise its jurisdiction if it determines at any time
10 that a court of another state is a more appropriate forum.

11 (b) If a court of this state declines to exercise its
12 jurisdiction under subsection (a) of this section, it shall either
13 dismiss or stay the proceeding. The court may impose any condition
14 the court considers just and proper, including the condition that a
15 petition for the appointment of a guardian or issuance of a
16 protective order be filed promptly in another state.

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

19 (1) Any expressed preference of the respondent;

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

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

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

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

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

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

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

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

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

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

19 (1) Decline to exercise jurisdiction;

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

1 the proceeding until a petition for the appointment of a guardian or
2 issuance of a protective order is filed in a court of another state
3 having jurisdiction; or

4 (3) Continue to exercise jurisdiction after considering:

5 (A) the extent to which the respondent and all persons
6 required to be notified of the proceedings have
7 acquiesced in the exercise of the court's
8 jurisdiction;

9 (B) whether it is a more appropriate forum than the court
10 of any other state under the factors set forth in
11 subsection (c) of Section 12 of this act; and

12 (C) whether the court of any other state would have
13 jurisdiction under factual circumstances in
14 substantial conformity with the jurisdictional
15 standards of Section 9 of this act.

16 (b) If a court of this state determines that it acquired
17 jurisdiction to appoint a guardian or issue a protective order
18 because a party seeking to invoke its jurisdiction engaged in
19 unjustifiable conduct, it may assess against that party necessary
20 and reasonable expenses, including attorney's fees, investigative
21 fees, court costs, communication expenses, witness fees and
22 expenses, and travel expenses. The court may not assess fees,
23 costs, or expenses of any kind against this state or a governmental

1 subdivision, agency, or instrumentality of this state unless
2 authorized by law other than this act.

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

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

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

17 Except for a petition for the appointment of a guardian in an
18 emergency or issuance of a protective order limited to property
19 located in this state under paragraph (1) or (2) of subsection (a)
20 of Section 10 of this act, if a petition for the appointment of a
21 guardian or issuance of a protective order is filed in this state
22 and in another state and neither petition has been dismissed or
23 withdrawn, the following rules apply:

1 (1) If the court in this state has jurisdiction under Section 9
2 of this act, it may proceed with the case unless a court in another
3 state acquires jurisdiction under provisions similar to Section 9 of
4 this act before the appointment or issuance of the order.

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

13 ARTICLE 3

14 TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

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

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

21 (b) Notice of a petition under subsection (a) of this section
22 shall be given to the persons that would be entitled to notice of a

1 petition in this state for the appointment of a guardian or
2 conservator.

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

8 (d) The court shall issue an order provisionally granting a
9 petition to transfer a guardianship and shall direct the guardian to
10 petition for guardianship in the other state if the court is
11 satisfied that the guardianship will be accepted by the court in the
12 other state and the court finds that:

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

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

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

21 (e) The court shall issue a provisional order granting a
22 petition to transfer a conservatorship and shall direct the
23 conservator to petition for conservatorship in the other state if

1 the court is satisfied that the conservatorship will be accepted by
2 the court of the other state and the court finds that:

3 (1) The protected person is physically present in or is
4 reasonably expected to move permanently to the other state, or the
5 protected person has a significant connection to the other state
6 considering the factors in subsection (b) of Section 7 of this act;

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

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

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

16 (1) A provisional order accepting the proceeding from the court
17 to which the proceeding is to be transferred which is issued under
18 provisions similar to Section 17 of this act; and

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

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

1 (a) To confirm transfer of a guardianship or conservatorship
2 transferred to this state under provisions similar to Section 16 of
3 this act, the guardian or conservator shall petition the court in
4 this state to accept the guardianship or conservatorship. The
5 petition shall include a certified copy of the other state's
6 provisional order of transfer.

7 (b) Notice of a petition under subsection (a) of this section
8 shall be given to those persons that would be entitled to notice if
9 the petition were a petition for the appointment of a guardian or
10 issuance of a protective order in both the transferring state and
11 this state. The notice shall be given in the same manner as notice
12 is required to be given in this state.

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

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

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

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

3 (e) The court shall issue a final order accepting the
4 proceeding and appointing the guardian or conservator as guardian or
5 conservator in this state upon its receipt from the court from which
6 the proceeding is being transferred of a final order issued under
7 provisions similar to Section 16 of this act transferring the
8 proceeding to this state.

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

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

18 (h) The denial by a court of this state of a petition to accept
19 a guardianship or conservatorship transferred from another state
20 does not affect the ability of the guardian or conservator to seek
21 appointment as guardian or conservator in this state under Section
22 3-101 of Title 30 of the Oklahoma Statutes if the court has

1 jurisdiction to make an appointment other than by reason of the
2 provisional order of transfer.

3 ARTICLE 4

4 REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

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

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

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

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

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

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

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

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

15 ARTICLE 5

16 MISCELLANEOUS PROVISIONS

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

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

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

4 This act modifies, limits, and supersedes the federal Electronic
5 Signatures in Global and National Commerce Act, 15 U.S.C. Section
6 7001, et seq., but does not modify, limit, or supersede Section
7 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
8 electronic delivery of any of the notices described in Section
9 103(b) of that act, 15 U.S.C. Section 7003(b).

10 SECTION 23. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 3-323 of Title 30, unless there
12 is created a duplication in numbering, reads as follows:

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

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

19 SECTION 24. This act shall become effective November 1, 2010.

20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-16-10 - DO
21 PASS, As Amended and Coauthored.