
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1720 Session of
2011

INTRODUCED BY HENNESSEY, BAKER, CALTAGIRONE, CLYMER, CURRY,
DALEY, DONATUCCI, GILLEN, GILLESPIE, GINGRICH, HALUSKA,
HARHART, HESS, HORNAMAN, KAVULICH, KILLION, KOTIK, MILLER,
MURT, RAPP, READSHAW, REICHLEY, ROSS, TAYLOR, VEREB AND
WATSON, JUNE 24, 2011

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES, JUNE
24, 2011

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, providing for uniform
3 adult guardianship and protective proceedings jurisdiction.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 20 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 59

9 UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

10 JURISDICTION

11 Subchapter

12 A. General Provisions

13 B. Jurisdiction

14 C. Transfer of Guardianship or Conservatorship

15 D. Registration and Recognition of Orders from Other States

16 E. Miscellaneous Provisions

1 or any other person allowed by the court to participate in a
2 guardianship or protective proceeding.

3 "Person." Notwithstanding 1 Pa.C.S. § 1991 (relating to
4 definitions) and except in the term "incapacitated person" or
5 "protected person," any:

6 (1) individual;

7 (2) corporation;

8 (3) business trust;

9 (4) estate;

10 (5) trust;

11 (6) partnership;

12 (7) limited liability company;

13 (8) association;

14 (9) joint venture;

15 (10) public corporation;

16 (11) government or governmental subdivision, agency or
17 instrumentality; or

18 (12) other legal or commercial entity.

19 "Protected person." An adult for whom a protective order has
20 been issued.

21 "Protective order." An order appointing a conservator or
22 other order related to management of an adult's property.

23 "Protective proceeding." A judicial proceeding in which a
24 protective order is sought or has been issued.

25 "Record." Information that is inscribed on a tangible medium
26 or that is stored in an electronic or other medium and is
27 retrievable in perceivable form.

28 "Respondent." An adult for whom a protective order or the
29 appointment of a guardian is sought.

30 "State." A state of the United States, the District of

1 Columbia, Puerto Rico, the Virgin Islands, a federally
2 recognized Indian tribe or any territory or insular possession
3 subject to the jurisdiction of the United States.

4 § 5903. International application of chapter.

5 A court of this Commonwealth may treat a foreign country as
6 if it were a state for the purpose of applying this subchapter
7 and Subchapters B (relating to jurisdiction), C (relating to
8 transfer of guardianship or conservatorship) and E (relating to
9 miscellaneous provisions).

10 § 5904. Communication between courts.

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

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

21 § 5905. Cooperation between courts.

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

26 (1) Hold an evidentiary hearing.

27 (2) Order a person in that state to produce evidence or
28 give testimony pursuant to procedures of that state.

29 (3) Order that an evaluation or assessment be made of
30 the respondent.

1 (4) Order any appropriate investigation of a person
2 involved in a proceeding.

3 (5) Forward to the court of this Commonwealth a
4 certified copy of the transcript or other record of a hearing
5 under paragraph (1) or any other proceeding, any evidence
6 otherwise produced under paragraph (2) and any evaluation or
7 assessment prepared in compliance with an order under
8 paragraph (3) or (4).

9 (6) Issue any order necessary to assure the appearance
10 in the proceeding of a person whose presence is necessary for
11 the court to make a determination, including the respondent
12 or the incapacitated or protected person.

13 (7) Issue an order authorizing the release of medical,
14 financial, criminal or other relevant information in that
15 state, including protected health information as defined in
16 45 CFR 160.103 (relating to definitions).

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

23 § 5906. Taking testimony in another state.

24 (a) General procedures.--In a guardianship or protective
25 proceeding, in addition to other procedures that may be
26 available, testimony of a witness who is located in another
27 state may be offered by deposition or other means allowable in
28 this Commonwealth for testimony taken in another state. The
29 court on its own motion may order that the testimony of a
30 witness be taken in another state and may prescribe the manner

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

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

9 SUBCHAPTER B

10 JURISDICTION

11 Sec.

12 5911. Definitions; significant connection factors.

13 5912. Exclusive basis.

14 5913. Jurisdiction.

15 5914. Special jurisdiction.

16 5915. Exclusive and continuing jurisdiction.

17 5916. Appropriate forum.

18 5917. Jurisdiction declined by reason of conduct.

19 5918. Notice of proceeding.

20 5919. Proceedings in more than one state.

21 § 5911. Definitions; significant connection factors.

22 (a) Definitions.--The following words and phrases when used
23 in this subchapter shall have the meanings given to them in this
24 section unless the context clearly indicates otherwise:

25 "Emergency." A circumstance:

26 (1) which likely will result in substantial harm to a
27 respondent's health, safety or welfare; and

28 (2) for which the appointment of a guardian is necessary
29 because no other person has authority and is willing to act
30 on the respondent's behalf.

1 "Home state." One of the following:

2 (1) The state in which the respondent was physically
3 present, including any period of temporary absence, for at
4 least six consecutive months immediately before the filing of
5 a petition for a protective order or the appointment of a
6 guardian.

7 (2) If the requirement of paragraph (1) is not met, the
8 state in which the respondent was physically present,
9 including any period of temporary absence, for at least six
10 consecutive months ending within the six months prior to the
11 filing of the petition.

12 "Significant-connection state." A state, other than the home
13 state, with which a respondent has a significant connection
14 other than mere physical presence and in which substantial
15 evidence concerning the respondent is available.

16 (b) Significant connection factors.--In determining under
17 sections 5913 (relating to jurisdiction) and 5921(e) (relating
18 to transfer of guardianship or conservatorship to another state)
19 whether a respondent has a significant connection with a
20 particular state, the court shall consider all of the following:

21 (1) The location of the respondent's family and other
22 persons required to be notified of the guardianship or
23 protective proceeding.

24 (2) The length of time the respondent at any time was
25 physically present in the state and the duration of any
26 absence.

27 (3) The location of the respondent's property.

28 (4) The extent to which the respondent has ties to the
29 state. This paragraph includes voting registration, state or
30 local tax return filing, vehicle registration, driver's

1 license, social relationship and receipt of services.

2 § 5912. Exclusive basis.

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

6 § 5913. Jurisdiction.

7 A court of this Commonwealth has jurisdiction to appoint a
8 guardian or issue a protective order for a respondent if one of
9 the following paragraphs applies:

10 (1) This Commonwealth is the respondent's home state.

11 (2) On the date the petition is filed, all of the
12 following subparagraphs apply:

13 (i) This Commonwealth is a significant-connection
14 state.

15 (ii) One of the following clauses applies:

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

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

25 (I) a petition for an appointment or order
26 is not filed in the respondent's home state;

27 (II) an objection to the court's
28 jurisdiction is not filed by a person required to
29 be notified of the proceeding; and

30 (III) the court in this Commonwealth

1 concludes that it is an appropriate forum under
2 the factors set forth in section 5916 (relating
3 to appropriate forum).

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

11 (4) The requirements for special jurisdiction under
12 section 5914 (relating to special jurisdiction) are met.
13 § 5914. Special jurisdiction.

14 (a) Scope.--A court of this Commonwealth lacking
15 jurisdiction under section 5913(1), (2) or (3) (relating to
16 jurisdiction) has special jurisdiction to do any of the
17 following:

18 (1) Appoint a guardian in an emergency for a term not
19 exceeding 90 days for a respondent who is physically present
20 in this Commonwealth.

21 (2) Issue a protective order with respect to real or
22 tangible personal property located in this Commonwealth.

23 (3) Appoint a guardian or conservator for an
24 incapacitated or protected person for whom a provisional
25 order to transfer the proceeding from another state has been
26 issued under procedures similar to section 5921 (relating to
27 transfer of guardianship or conservatorship to another
28 state).

29 (b) Dismissal.--If a petition for the appointment of a
30 guardian in an emergency is brought in this Commonwealth and

1 this Commonwealth was not the respondent's home state on the
2 date the petition was filed, the court shall dismiss the
3 proceeding at the request of the court of the home state, if
4 any, whether dismissal is requested before or after the
5 emergency appointment.

6 § 5915. Exclusive and continuing jurisdiction.

7 Except as otherwise provided in section 5914 (relating to
8 special jurisdiction), a court that has appointed a guardian or
9 issued a protective order consistent with this chapter has
10 exclusive and continuing jurisdiction over the proceeding until
11 it is terminated by the court or the appointment or order
12 expires by its own terms.

13 § 5916. Appropriate forum.

14 (a) Decline to exercise jurisdiction.--A court of this
15 Commonwealth having jurisdiction under section 5913 (relating to
16 jurisdiction) to appoint a guardian or issue a protective order
17 may decline to exercise its jurisdiction if it determines at any
18 time that a court of another state is a more appropriate forum.

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

26 (c) Consideration.--In determining whether it is an
27 appropriate forum, the court shall consider all relevant
28 factors, including:

- 29 (1) any expressed preference of the respondent;
30 (2) whether abuse, neglect or exploitation of the

1 respondent has occurred or is likely to occur and which state
2 could best protect the respondent from the abuse, neglect or
3 exploitation;

4 (3) the length of time the respondent was physically
5 present in or was a legal resident of this Commonwealth or
6 another state;

7 (4) the distance of the respondent from the court in
8 each state;

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

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

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

15 (8) the familiarity of the court of each state with the
16 facts and issues in the proceeding; and

17 (9) if an appointment were made, the court's ability to
18 monitor the conduct of the guardian or conservator.

19 § 5917. Jurisdiction declined by reason of conduct.

20 (a) Judicial options.--If a court of this Commonwealth
21 determines that it acquired jurisdiction to appoint a guardian
22 or issue a protective order because of unjustifiable conduct,
23 the court may exercise an option under any of the following
24 paragraphs:

25 (1) Decline to exercise jurisdiction.

26 (2) Exercise jurisdiction for the limited purpose of
27 fashioning an appropriate remedy to:

28 (i) ensure the health, safety and welfare of the
29 respondent or the protection of the respondent's
30 property; or

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

6 (3) Continue to exercise jurisdiction after considering:

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

10 (ii) whether it is a more appropriate forum than the
11 court of any other state under the factors set forth in
12 section 5916(c) (relating to appropriate forum); and

13 (iii) whether the court of any other state would
14 have jurisdiction under factual circumstances in
15 substantial conformity with the jurisdictional standards
16 of section 5913 (relating to jurisdiction).

17 (b) Costs and fees.--If a court of this Commonwealth
18 determines that it acquired jurisdiction to appoint a guardian
19 or issue a protective order because a party seeking to invoke
20 its jurisdiction engaged in unjustifiable conduct, it may assess
21 against that party necessary and reasonable expenses, including
22 attorney fees, investigative fees, court costs, communication
23 expenses, witness fees and expenses and travel expenses. The
24 court may not assess fees, costs or expenses of any kind against
25 the Commonwealth, a political subdivision or an instrumentality
26 of the Commonwealth unless authorized by law other than this
27 chapter.

28 § 5918. Notice of proceeding.

29 If a petition for the appointment of a guardian or issuance
30 of a protective order is brought in this Commonwealth and this

1 Commonwealth was not the respondent's home state on the date the
2 petition was filed, in addition to complying with the notice
3 requirements of this Commonwealth, notice of the petition must
4 be given to those persons who would be entitled to notice of the
5 petition if a proceeding were brought in the respondent's home
6 state. The notice must be given in the same manner as notice is
7 required to be given in this Commonwealth.

8 § 5919. Proceedings in more than one state.

9 Except for a petition for the appointment of a guardian in an
10 emergency or issuance of a protective order limited to property
11 located in this Commonwealth under section 5914(a)(1) or (2)
12 (relating to special jurisdiction), if a petition for the
13 appointment of a guardian or issuance of a protective order is
14 filed in this Commonwealth and in another state and neither
15 petition has been dismissed or withdrawn, all of the following
16 apply:

17 (1) If the court in this Commonwealth has jurisdiction
18 under section 5913 (relating to jurisdiction), it may proceed
19 with the case unless a court in another state acquires
20 jurisdiction under provisions similar to section 5913 before
21 the appointment or issuance of the order.

22 (2) If the court in this Commonwealth does not have
23 jurisdiction under section 5913, whether at the time the
24 petition is filed or at any time before the appointment or
25 issuance of the order, the court shall stay the proceeding
26 and communicate with the court in the other state. If the
27 court in the other state has jurisdiction, the court in this
28 Commonwealth shall dismiss the petition unless the court in
29 the other state determines that the court in this
30 Commonwealth is a more appropriate forum.

1 (1) the incapacitated person is physically present in or
2 is reasonably expected to move permanently to the other
3 state;

4 (2) an objection to the transfer has not been made or,
5 if an objection has been made, the objector has not
6 established that the transfer would be contrary to the
7 interests of the incapacitated person; and

8 (3) plans for care and services for the incapacitated
9 person in the other state are reasonable and sufficient.

10 (e) Provisional conservatorship order.--The court shall
11 issue a provisional order granting a petition to transfer a
12 conservatorship and shall direct the conservator to petition for
13 conservatorship in the other state if the court is satisfied
14 that the conservatorship will be accepted by the court of the
15 other state and the court finds that:

16 (1) the protected person is physically present in or is
17 reasonably expected to move permanently to the other state,
18 or the protected person has a significant connection to the
19 other state considering the factors in section 5911(b)
20 (relating to definitions; significant connection factors);

21 (2) an objection to the transfer has not been made or,
22 if an objection has been made, the objector has not
23 established that the transfer would be contrary to the
24 interests of the protected person; and

25 (3) adequate arrangements will be made for management of
26 the protected person's property.

27 (f) Final order.--The court shall issue a final order
28 confirming the transfer and terminating the guardianship or
29 conservatorship upon its receipt of:

30 (1) a provisional order accepting the proceeding from

1 the court to which the proceeding is to be transferred which
2 is issued under provisions similar to section 5922 (relating
3 to accepting guardianship or conservatorship transferred from
4 another state); and

5 (2) the documents required to terminate a guardianship
6 or conservatorship in this Commonwealth.

7 § 5922. Accepting guardianship or conservatorship transferred
8 from another state.

9 (a) Petition.--To confirm transfer of a guardianship or
10 conservatorship transferred to this Commonwealth under
11 provisions similar to section 5921 (relating to transfer of
12 guardianship or conservatorship to another state), the guardian
13 or conservator must petition the court in this Commonwealth to
14 accept the guardianship or conservatorship. The petition must
15 include a certified copy of the other state's provisional order
16 of transfer.

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

23 (c) Hearing.--The court shall hold a hearing on a petition
24 filed under subsection (a):

25 (1) on its own motion; or

26 (2) on request of:

27 (i) the guardian or conservator;

28 (ii) the incapacitated or protected person; or

29 (iii) another person required to be notified of the

30 petition.

1 (d) Provisional order.--The court shall issue an order
2 provisionally granting a petition filed under subsection (a)
3 unless:

4 (1) an objection is made and the objector establishes
5 that transfer of the proceeding would be contrary to the
6 interests of the incapacitated or protected person; or
7 (2) the guardian or conservator is ineligible for
8 appointment in this Commonwealth.

9 (e) Final order.--The court shall issue a final order
10 accepting the proceeding and appointing the guardian or
11 conservator as guardian or conservator in this Commonwealth upon
12 its receipt from the court from which the proceeding is being
13 transferred of a final order issued under provisions similar to
14 section 5921 transferring the proceeding to this Commonwealth.

15 (f) Modification.--Not later than 90 days after issuance of
16 a final order accepting transfer of a guardianship or
17 conservatorship, the court shall determine whether the
18 guardianship or conservatorship requires modification to conform
19 to the laws of this Commonwealth.

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

26 (h) Effect of denial.--The denial by a court of this
27 Commonwealth of a petition to accept a guardianship or
28 conservatorship transferred from another state does not affect
29 the ability of the guardian or conservator to seek appointment
30 as guardian or conservator in this Commonwealth under Chapter 55

1 (relating to incapacitated persons) if the court has
2 jurisdiction to make an appointment other than by reason of the
3 provisional order of transfer.

4 SUBCHAPTER D

5 REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

6 Sec.

7 5931. Registration of guardianship orders.

8 5932. Registration of protective orders.

9 5933. Effect of registration.

10 § 5931. Registration of guardianship orders.

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

19 § 5932. Registration of protective orders.

20 If a conservator has been appointed in another state and a
21 petition for a protective order is not pending in this
22 Commonwealth, the conservator appointed in the other state,
23 after giving notice to the appointing court of an intent to
24 register, may register the protective order in this Commonwealth
25 by filing as a foreign judgment in a court of this Commonwealth,
26 in any judicial district in which property belonging to the
27 protected person is located, certified copies of the order and
28 letters of office and of any bond.

29 § 5933. Effect of registration.

30 (a) Powers.--Upon registration of a guardianship or

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

8 (b) Relief authorized.--A court of this Commonwealth may
9 grant any relief available under this chapter and other law of
10 this Commonwealth to enforce a registered order.

11 SUBCHAPTER E

12 MISCELLANEOUS PROVISIONS

13 Sec.

14 5991. Uniformity of application and construction.

15 5992. Relation to Electronic Signatures in Global and National
16 Commerce Act.

17 § 5991. Uniformity of application and construction.

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

21 § 5992. Relation to Electronic Signatures in Global and
22 National Commerce Act.

23 (a) General rule.--Except as set forth in subsection (b),
24 this chapter modifies, limits or supersedes the Electronic
25 Signatures in Global and National Commerce Act (Public Law
26 106-229, 15 U.S.C. § 7001 et seq.).

27 (b) Exceptions.--

28 (1) This chapter does not modify, limit or supersede
29 section 101(c) of the Electronic Signatures in Global and
30 National Commerce Act (15 U.S.C. § 7001(c)).

1 (2) This chapter does not authorize electronic delivery
2 of any of the notices described in section 103(b) of the
3 Electronic Signatures in Global and National Commerce Act (15
4 U.S.C. § 7003(b)).

5 Section 2. Applicability is as follows:

6 (1) Subject to paragraph (2), the addition of 20 Pa.C.S.
7 Ch. 59 applies to guardianship and protective proceedings
8 begun on or after the effective date of this act.

9 (2) The addition of the following provisions of 20
10 Pa.C.S. Ch. 59 apply to proceedings begun before the
11 effective date of this section, regardless of whether a
12 guardianship or protective order has been issued:

- 13 (i) Subchapter A.
- 14 (ii) Subchapter C.
- 15 (iii) Subchapter D.
- 16 (iv) Subchapter E.

17 Section 3. This act shall take effect in 60 days.