

**ALABAMA UNIFORM ADULT
GUARDIANSHIP AND
PROTECTIVE PROCEEDINGS JURISDICTION
ACT
ARTICLE 1
GENERAL PROVISIONS**

SECTION 101. SHORT TITLE. This act may be cited as the Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Uniform Comment

The title to the Act succinctly describes the Act's scope. The Act applies only to court jurisdiction and related topics for adults for whom the appointment of a guardian or conservator or other protective order is being sought or has been issued.

The drafting committee elected to limit the Act to adults for two reasons. First, jurisdictional issues concerning guardians for minors are subsumed by the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Second, while the UCCJEA does not address conservatorship and other issues involving the property of minors, all of the problems and concerns that led the Uniform Law Commission to appoint a drafting committee involved adults.

SECTION 102. DEFINITIONS. In this act:

(1) "Adult" means an individual who has attained nineteen 18 9 years of age or who by statute has otherwise been deemed to be an adult under the laws of the State of Alabama or the laws of another state.

(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under Section 26-2A-20(2)(1975) (Alabama Uniform Guardianship and Protective Proceedings Act).

(3) "Court" means a probate court of this state and includes an appropriate court of another state.

(~~3~~4) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Section 26-2A-20(7)(1975) (Alabama Uniform Guardianship and Protective Proceedings Act).

(~~4~~5) "Guardianship order" means an order appointing a guardian.

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

(67) “Incapacitated person” means an adult for whom a guardian has been appointed.

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

(89) “Person,” except as used in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(910) “Protected person” means an adult for whom a protective order has been issued.

(1011) “Protective order” means an order appointing a conservator or other order related to management of an adult’s

property.

(~~11~~12) “Protective proceeding” means a judicial proceeding in which a protective order is sought or has been issued.

(~~12~~13) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(~~13~~14) “Respondent” means an adult for whom a protective order or the appointment of a guardian is sought.

(~~14~~15) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

Alabama Comment

This section generally follows Section 102 of the Uniform Act. Alabama has added the definition of “court” and renumbered the following subsections.

The term “adult” has been modified to recognize that the age of majority in Alabama is nineteen. Nonetheless, also

by state law, an individual who is 18 years old may become an adult. See Ala. Code §§ 26-13-1 to 13-8; § 30-4-15 and § 30-4-16.

The term “court” is defined as any probate court of the State of Alabama. This is consistent with the definition of court in the Alabama Uniform Guardianship Act. Ala. Code § 26-2A-20(3). The definition also includes “an appropriate court of another state.” This definition is used primarily to retain statutory language consistent with the Uniform Act and to insure that cross-references to “court” contained in other sections of the Act remained accurate without substantial change.

However, circuit courts which hear guardianship and conservatorship cases by virtue of their appellate or removal authority will also be bound by the provisions of this Act. Thus, the circuit courts are bound by this Act when resolving interstate jurisdiction disputes over guardianship and conservatorship matters.

This definition of “court” and these accompanying comments should not be construed to in any way abrogate or affect the removal or appellate jurisdiction of the circuit courts of the state of Alabama. This act continues Alabama’s practice of providing for removal from probate court to circuit court in Section 203(b) of this Act. Removal is to be in accordance with current law. Ala. Code § 26-2-2.

Alabama retained the definition of “protective order” contained in the Uniform Act in order to insure that orders related to conservatorship issued by other states would be subject to this Act regardless of whether the issuing state uses the term “protective order”. The definition was not intended to extend the jurisdiction of this Act beyond protective orders issued in the context of a conservatorship proceeding. The

term “protective order” is not intended to encompass orders entered under the Protection from Abuse Act or the Adult Protective Services Act. Rather, this term is narrowly used to refer to orders entered for the protection of one deemed incapacitated to handle their own affairs pursuant to the Alabama Uniform Guardianship and Protective Proceedings Act, Ala. Code § 26-2A-1, et. seq. (1975) or pursuant to another state’s guardianship and conservatorship statutes.

Uniform Comment

The definition of “adult” (paragraph (1)) would exclude an emancipated minor. The Act is not designed to supplant the local substantive law on guardianship. States whose guardianship law treats emancipated minors as adults may wish to modify this definition.

Three of the other definitions are standard uniform law terms. These are the definitions of “person” (paragraph (8)), “record” (paragraph (12)), and “state” (paragraph (14)). Two are common procedural terms. The individual for whom a guardianship or protective order is sought is a “respondent” (paragraph (13)). A person who may participate in a guardianship or protective proceeding is referred to as a “party” (paragraph (7)).

The remaining definitions refer to standard guardianship terminology used in a majority of states. A “guardian” (paragraph (3)) is appointed in a “guardianship order” (paragraph (4)) which is issued as part of a “guardianship proceeding” (paragraph (5)) and which authorizes the guardian to make decisions regarding the person of an “incapacitated person” (paragraph (6)). A “conservator” (paragraph (2)) is appointed pursuant to a “protective order” (paragraph (10)) which is issued as part of a “protective proceeding” (paragraph (11)) and which

authorizes the conservator to manage the property of a “protected person” (paragraph (9)).

In most states, a protective order may be issued by the court without the appointment of a conservator. For example, under the Uniform Guardianship and Protective Proceedings Act, the court may authorize a so-called single transaction for the security, service, or care meeting the foreseeable needs of the protected person, including the payment, delivery, deposit, or retention of property; sale, mortgage, lease, or other transfer of property; purchase of an annuity; making a contract for life care, deposit contract, or contract for training and education; and the creation of or addition to a suitable trust. UGPPA (1997) §412(1). It is for this reason that the Act contains frequent references to the broader category of protective orders. Where the Act is intended to apply only to conservatorships, such as in Article 3 dealing with transfers of proceedings to other states, the Act refers to conservatorship and not to the broader category of protective proceeding.

The Act does not limit the types of conservatorships or guardianships to which the Act applies. The Act applies whether the conservatorship or guardianship is denominated as plenary, limited, temporary or emergency. The Act, however, would not ordinarily apply to a guardian ad litem, who is ordinarily appointed by the court to represent a person or conduct an investigation in a specified legal proceeding.

Section 102 is not the sole definitional section in the Act. Section 201 contains definitions of important terms used only in Article 2. These are the definitions of “emergency” (Section 201(1)), “home state” (Section 201(2)), and “significant-connection state” (Section 201(3)).

SECTION 103. INTERNATIONAL APPLICATION

~~OF ACT. A court of this state may treat a foreign country as if it were a state for the purpose of applying this [article] and [Articles] 2, 3, and 5.~~

(a) A court of this state may, by written order, treat a foreign country as if it were a state of the United States for the purpose of applying this article and Articles 2, 3, and 5.

(b) Except as otherwise provided in subsection (c), a guardianship or conservatorship determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under Article 3.

(c) A court of this state need not apply this chapter if the guardianship or conservatorship law of a foreign country violates fundamental principles of human rights.

Alabama Comment

Alabama substantially deviated from Section 103 of the Uniform Act concerning the recognition and enforcement of foreign guardianship and conservatorship orders. Alabama adapted language concerning international recognition of

foreign orders from the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (hereinafter “UCCJEA”), Ala. Code § 30-3B-105 (1975). In deciding whether to recognize or enforce foreign orders under this Act, the court should consider the legislative history, committee notes and court decisions interpreting §105 of the UCCJEA.

Uniform Comment

This section addresses application of the Act to guardianship and protective orders issued in other countries. A foreign order is not enforceable pursuant to the registration procedures of Article 4, but a court in this country may otherwise apply this Act to a foreign proceeding as if the foreign country were an American state. Consequently, a court may conclude that the court in the foreign country has jurisdiction because it constitutes the respondent’s “home state” or “significant-connection state” and may therefore decline to exercise jurisdiction on the ground that the court of the foreign country has a higher priority under Section 203. Or the court may treat the foreign country as if it were a state of the United States for purposes of applying the transfer provisions of Article 3.

This section addresses similar issues to but differs in result from Section 105 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Under the UCCJEA, the United States court must honor a custody order issued by the court of a foreign country if the order was issued under factual circumstances in substantial conformity with the jurisdictional standards of the UCCJEA. Only if the child custody law violates fundamental principles of human rights is enforcement excused. Because guardianship regimes vary so greatly around the world, particularly in civil law countries, it was concluded that under this Act a more flexible approach was needed. Under this Act, a court may but is not required to

recognize the foreign order.

The fact that a guardianship or protective order of a foreign country cannot be enforced pursuant to the registration procedures of Article 4 does not preclude enforcement by the court under some other provision or rule of law.

SECTION 104. COMMUNICATION BETWEEN COURTS.

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

(b) If the parties are not allowed to participate in the communication, the court shall give all parties the opportunity to present facts and legal arguments before the court issues an order establishing jurisdiction.

(c) Except as otherwise provided in subsection (d b), the court shall make a record of the any communication under this section and promptly inform the parties of the communication and grant them access to the record. ~~The record may be limited to the fact that the communication~~

~~occurred.~~

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

Alabama Comment

Alabama deviated from this section of the Uniform Act and chose instead to adopt an earlier draft provision of the Uniform Act to require the court to make a record of communications with other courts and to grant the parties access to that record. In this manner, a record is created to support the court's determination of jurisdiction.

Uniform Comment

This section emphasizes the importance of communications among courts with an interest in a particular matter. Most commonly, this would include communication between courts of different states to resolve an issue of which court has jurisdiction to proceed under Article 2. It would also include communication between courts of different states to facilitate the transfer of a guardianship or conservatorship to a different state under Article 3. Communication can occur in a variety of ways, including by electronic means. This section does not prescribe the use of any particular means of communication.

The court may authorize the parties to participate in the communication. But the Act does not mandate participation or require that the court give the parties notice of any communication. Communication between courts is often difficult to schedule and participation by the parties may be

impractical. Phone calls or electronic communications often have to be made after-hours or whenever the schedules of judges allow. When issuing a jurisdictional or transfer order, the court should set forth the extent to which a communication with another court may have been a factor in the decision.

This section includes brackets around the language relating to whether a record must be made of any communication with the court of the other state. As indicated by the Legislative Note to this section, the language is bracketed because of a concern in some states that a legislative enactment directing when a court must make a record in a judicial proceeding may violate the doctrine on separation of powers. The language is not bracketed because the drafters concluded that the making of a record is not important. Rather, if concerns about separation of powers leads to the deletion of the bracketed language, the enacting state is encouraged to achieve the objectives of the bracketed language by promulgating a comparable provision by judicial rule.

This section does not prescribe the extent of the record that the court must make, leaving that issue to the court. A record might include notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum summarizing a conversation, and email communications. No record need be made of relatively inconsequential matters such as scheduling, calendars, and court records.

Section 110 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) addresses similar issues as this section but is more detailed. As is the case with several other provisions of this Act, the drafters of this Act concluded that the more varied circumstances of adult guardianship and protective proceedings suggested a need for greater flexibility.

SECTION 105. COOPERATION BETWEEN COURTS.

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

- (1) hold an evidentiary hearing;
- (2) order a person in that state to produce evidence or give testimony pursuant to procedures of that state;
- (3) order that an evaluation or assessment be made of the respondent;
- (4) order any appropriate investigation of a person involved in a proceeding;
- (5) forward to the court of this state a certified copy of the transcript or other record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise produced under paragraph (2), and any evaluation or assessment prepared in compliance with

an order under paragraph (3) or (4);

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

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

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

Alabama Comment

This section is identical to Section 105 of the Uniform Act. Subsection (a)(5) does not require an authenticated copy of a transcript or record of a hearing.

Uniform Comment

Subsection (a) of this section is similar to Section 112(a) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), although modified to address issues of concern in adult guardianship and protective proceedings and with the addition of subsection (a)(7), which addresses the release of health information protected under HIPAA. Subsection (b), which clarifies that a court has jurisdiction to respond to requests for assistance from courts in other states even though it might otherwise not have jurisdiction over the proceeding, is not found in although probably implicit in the UCCJEA.

Court cooperation is essential to the success of this Act. This section is designed to facilitate such court cooperation. It provides mechanisms for courts to cooperate with each other in order to decide cases in an efficient manner without causing undue expense to the parties. Courts may request assistance from courts of other states and may assist courts of other states. Typically, such assistance will be requested to resolve a jurisdictional issue arising under Article 2 or an issue concerning a transfer proceeding under Article 3.

This section does not address assessment of costs and expenses, leaving that issue to local law. Should a court have acquired jurisdiction because of a party's unjustifiable conduct, Section 207(b) authorizes the court to assess against the party all costs and expenses, including attorney's fees.

SECTION 106. TAKING TESTIMONY IN ANOTHER STATE.

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

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

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not

produce an original writing may not be excluded from evidence solely on an objection based on ~~the best evidence rule~~ the means of transmission.

Alabama Comment

This section follows Section 106 of the Uniform Act and includes optional subsection (c). Under the terms of the Uniform Act, subsection (c) of this section prohibited the exclusion of evidence transmitted from another state to a court of this state to be excluded pursuant to the best evidence rule. Since Alabama law provides for sufficient exceptions to the best evidence rule to accommodate documents transmitted via facsimile, this subsection was amended to specifically address the means of transmission alone.

Uniform Comment

This section is similar to Section 111 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). That section was in turn derived from Section 316 of the Uniform Interstate Family Support Act (1992) and the much earlier and now otherwise obsolete Uniform Interstate and International Procedure Act (1962).

This section is designed to fill the vacuum that often exists in cases involving an adult with interstate contacts when much of the essential information about the individual is located in another state.

Subsection (a) empowers the court to initiate the gathering of out-of-state evidence, including depositions, written interrogatories and other discovery devices. The authority granted to the court in no way precludes the

gathering of out-of-state evidence by a party, including the taking of depositions out-of-state.

Subsections (b) and (c) clarify that modern modes of communication are permissible for the taking of depositions and receipt of documents into evidence. A state that has adequate exceptions to its best evidence rule to permit the introduction of evidence transmitted by facsimile or in electronic form should delete subsection (c), which has been placed in brackets for this reason.

This section is consistent with and complementary to the Uniform Interstate Depositions and Discovery Act (2007), which specifies the procedure for taking depositions in other states.

ARTICLE 2

JURISDICTION

SECTION 201. DEFINITIONS; SIGNIFICANT CONNECTION FACTORS.

(a) In this article:

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

(2) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for

at least six consecutive months ending within the six months prior to the filing of the petition.

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

(b) In determining under Sections 203 and Section 301(e) whether a respondent has a significant connection with a particular state, the court shall consider:

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

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

(3) the location of the respondent’s property;

and

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

Alabama Comment

This section is identical to Section 201 of the Uniform Act. The concept of "home state" is consistent with the law in the Alabama Child Custody Jurisdiction and Enforcement Act, (UCCJEA). Ala. Code § 30-3B-101, et seq. As noted in the uniform comment below, many of the definitions contained in this section are based upon definitions used in the Uniform Child Custody Jurisdiction and Enforcement Act, codified at Section 30-3B-102 of the Alabama Code.

Uniform Comment

The terms "emergency," "home state," and "significant-connection state" are defined in this section and not in Section 102 because they are used only in Article 2.

The definition of "emergency" (subsection (a)(1)) is taken from the emergency guardianship provision of the Uniform Guardianship and Protective Proceedings Act (1997), Section 312.

Pursuant to Section 204 of this Act, a court has jurisdiction to appoint a guardian in an emergency for a period of up to 90 days even though it does not otherwise have jurisdiction. However, the emergency appointment is subject to the direction of the court in the respondent's home state. Pursuant to Section 204(b), the emergency proceeding must be

dismissed at the request of the court in the respondent's home state.

Appointing a guardian in an emergency should be an unusual event. Although most states have emergency guardianship statutes, not all states do, and in those states that do have such statutes, there is great variation on whether and how an emergency is defined. To provide some uniformity on when a court acquires emergency jurisdiction, the drafters of this Act concluded that adding a definition of emergency was essential. The definition does not preclude an enacting jurisdiction from appointing a guardian under an emergency guardianship statute with a different or broader test of emergency if the court otherwise has jurisdiction to make an appointment under Section 203.

Pursuant to Section 203, a court in the respondent's home state has primary jurisdiction to appoint a guardian or issue a protective order. A court in a significant-connection state has jurisdiction if the respondent does not have a home state and in other circumstances specified in Section 203. The definitions of "home state" and "significant-connection state" are therefore important to an understanding of the Act.

The definition of "home state" (subsection (a)(2)) is derived from but differs in a couple of respects from the definition of the same term in Section 102 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). First, unlike the definition in the UCCJEA, the definition in this Act clarifies that actual physical presence is necessary. The UCCJEA definition instead focuses on where the child has "lived" for the prior six months. Basing the test on where someone has "lived" may imply that the term "home state" is similar to the concept of domicile. Domicile, in an adult guardianship context, is a vague concept that can easily lead to claims of jurisdiction by courts in more than one state. Second, under the

UCCJEA, home state jurisdiction continues for six months following physical removal from the state and the state has ceased to be the actual home. Under this Act, the six-month tail is incorporated directly into the definition of home state. The place where the respondent was last physically present for six months continues as the home state for six months following physical removal from the state. This modification of the UCCJEA definition eliminates the need to refer to the six-month tail each time home state jurisdiction is mentioned in the Act.

The definition of “significant-connection state” (subsection (a)(3)) is similar to Section 201(a)(2) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). However, subsection (b) of this Section adds a list of factors relevant to adult guardianship and protective proceedings to aid the court in deciding whether a particular place is a significant-connection state. Under Section 301(e)(1), the significant connection factors listed in the definition are to be taken into account in determining whether a conservatorship may be transferred to another state.

SECTION 202. EXCLUSIVE BASIS. This article provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

Alabama Comment

This section is identical to Section 202 of the Uniform Act. This Act does not apply to the Alabama Protection from Abuse Act, Ala. Code § 30-1-1, et. seq. nor the Alabama Adult Protective Services Act, Ala. Code § 38-9-1, et. seq. because

the act limits a “protective order” to “an order appointing a conservator or other related to management of an adult’s property.” See, Section 102(11).

Uniform Comment

Similar to Section 201(b) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), which provides that the UCCJEA is the exclusive basis for determining jurisdiction to issue a child custody order, this section provides that this article is the exclusive jurisdictional basis for determining jurisdiction to appoint a guardian or issue a protective order for an adult. An enacting jurisdiction will therefore need to repeal any existing provisions addressing jurisdiction in guardianship and protective proceedings cases. A Legislative Note to Section 503 provides guidance on which provisions need to be repealed or amended. The drafters of this Act concluded that limiting the Act to “interstate” cases was unworkable. Such cases are hard to define, but even if they could be defined, overlaying this Act onto a state’s existing jurisdictional rules would leave too many gaps and inconsistencies. In addition, if the particular case is truly local, the local court would likely have jurisdiction under both this Act as well as under prior law.

SECTION 203. JURISDICTION.

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

- (1) this state is the respondent’s home state;
- (2) on the date the petition is filed, this state is

a significant-connection state and:

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

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

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

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

(iii) the court in this state concludes that it is an appropriate forum under the factors set forth in Section 206;

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

(4) the requirements for special jurisdiction under Section 204 are met.

(b) When the jurisdiction of a court of this state is contested under this Article, such a protective proceeding may be removed to circuit court in accordance with Section 26-2-2. Nothing in this section is intended to limit the jurisdiction of those Alabama probate courts which have been granted equity jurisdiction.

(c) Nothing in this section shall be construed as extending the provisions of this Act to proceedings brought pursuant to Sections 30-5-1, et seq. (Protection from Abuse Act)

or Sections 38-9-1, et seq. (Adult Protective Services Act).

Alabama Comment

Subsection (a) is derived from Section 202 of the Uniform Act. Subsection (b) continues Alabama's practice of permitting removal of certain cases from Probate Court to Circuit Court. Subsection (c) was added to clarify that this Act does not apply to provisions of the Protection from Abuse Act nor to the Adult Protective Services Act.

Uniform Comment

Similar to the Uniform Child Jurisdiction and Enforcement Act (1997), this Act creates a three-level priority for determining which state has jurisdiction to appoint a guardian or issue a protective order; the home state (defined in Section 201(a)(2)), followed by a significant-connection state (defined in Section 201(a)(3)), followed by other jurisdictions. The principal objective of this section is to eliminate the possibility of dual appointments or orders except for the special circumstances specified in Section 204.

While this section is the principal provision for determining whether a particular court has jurisdiction to appoint a guardian or issue a protective order, it is not the only provision. As indicated in the cross-reference in Section 203(4), a court that does not otherwise have jurisdiction under Section 203 may have jurisdiction under the special circumstances specified in Section 204.

Pursuant to Section 203(1), the home state has primary jurisdiction to appoint a guardian or conservator or issue another type of protective order. This jurisdiction terminates if the state ceases to be the home state, if a court of the home state declines to exercise jurisdiction under Section 206 on the

basis that another state is a more appropriate forum, or, as provided in Section 205, a court of another state has appointed a guardian or issued a protective order consistent with this Act. The standards by which a home state that has enacted the Act may decline jurisdiction on the basis that another state is a more appropriate forum are specified in Section 206. Should the home state not have enacted the Act, Section 203(1) does not require that the declination meet the standards of Section 206.

Once a petition is filed in a court of the respondent's home state, that state does not cease to be the respondent's home state upon the passage of time even though it may be many months before an appointment is made or order issued and during that period the respondent is physically located. Only upon dismissal of the petition can the court cease to be the home state due to the passage of time. Under the definition of "home state," the six-month physical presence requirement is fulfilled or not on the date the petition is filed. *See* Section 201(a)(2).

A significant-connection state has jurisdiction under two possible bases; Section 203(2)(A) and Section 203(2)(B). Under Section 203(2)(A), a significant-connection state has jurisdiction if the individual does not have a home state or if the home state has declined jurisdiction on the basis that the significant-connection state is a more appropriate forum.

Section 203(2)(B) is designed to facilitate consideration of cases where jurisdiction is not in dispute. Section 203(2)(B) allows a court in a significant-connection state to exercise jurisdiction even though the respondent has a home state and the home state has not declined jurisdiction. The significant-connection state may assume jurisdiction under these circumstances, however, only in situations where the parties are not in disagreement concerning which court should hear

the case. Jurisdiction may not be exercised by a significant-connection state under Section 203(2)(B) if (1) a petition has already been filed and is still pending in the home state or other significant-connection state; or (2) prior to making the appointment or issuing the order, a petition is filed in the respondent's home state or an objection to the court's jurisdiction is filed by a person required to be notified of the proceeding. Additionally, the court in the significant-connection state must conclude that it is an appropriate forum applying the factors listed in Section 206.

There is nothing comparable to Section 203(2)(B) in the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Under Section 201 of the UCCJEA a court in a significant-connection state acquires jurisdiction only if the child does not have a home state or the court of that state has declined jurisdiction. The drafters of this Act concluded that cases involving adults differed sufficiently from child custody matters that a different rule is appropriate for adult proceedings in situations where jurisdiction is uncontested.

Pursuant to Section 203(3), a court in a state that is neither the home state or a significant-connection state has jurisdiction if the home state and all significant-connection states have declined jurisdiction or the respondent does not have a home state or significant-connection state. The state must have some connection with the proceeding, however. As Section 203(a)(3) clarifies, jurisdiction in the state must be consistent with the state and United States constitutions.

SECTION 204. SPECIAL JURISDICTION.

(a) A court of this state lacking jurisdiction under

Section 203 has special jurisdiction to do any of the following:

(1) appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in this state;

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

(3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to Section 301.

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

(c) The court may entertain successive petitions based upon its special jurisdiction under this section provided

that the court receives no request for dismissal from the court of the respondent's home state and the court determines that the need for guardianship and/or conservatorship under this section continues.

Alabama Comment

This section should be clearly distinguished from the provisions of the Alabama Guardianship and Protective Proceedings Act concerning the emergency or temporary appointment of guardians. See Ala. Code § 26-2A-107 (1975). Nothing in this section should be construed as repealing the provisions of the Uniform Guardianship and Protective Proceedings Act concerning such temporary appointments. Rather, this provision is intended to limit the court's exercise of special jurisdiction in an emergency to ninety (90) days, thereby reducing the length of a temporary appointment – normally six months under the provisions of Section 26-2A-107 (1975), when the court lacks jurisdiction under Section 203 of this Act.

When a petition for an emergency appointment is brought pursuant to Section 26-2A-107 and no dispute concerning interstate jurisdiction is raised, the provisions of Section 26-2A-107 apply without the limitations contained in this section.

Subsection (c) was added by Alabama to clarify the court's authority to order successive emergency petitions recognizing that after two successive petitions for emergency jurisdiction, the state granting the emergency petition may become the home state pursuant to the terms of the Act.

Uniform Comment

This section lists the special circumstances where a court without jurisdiction under the general rule of Section 203 has jurisdiction for limited purposes. The three purposes are (1) the appointment of a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically located in the state (subsection (a)(1)); (2) the issuance of a protective order for a respondent who owns an interest in real or tangible personal property located in the state (subsection (a)(2)); and (3) the grant of jurisdiction to consider a petition requesting the transfer of a guardianship or conservatorship proceeding from another state (subsection (a)(3)). If the court has jurisdiction under Section 203, reference to Section 204 is unnecessary. The general jurisdiction granted under Section 203 includes within it all of the special circumstances specified in this section.

When an emergency arises, action must often be taken on the spot in the place where the respondent happens to be physically located at the time. This place may not necessarily be located in the respondent's home state or even a significant-connection state. Subsection (a)(1) assures that the court where the respondent happens to be physically located at the time has jurisdiction to appoint a guardian in an emergency but only for a limited period of 90 days. The time limit is placed in brackets to signal that enacting states may substitute the time period under their existing emergency guardianship procedures. As provided in subsection (b), the emergency jurisdiction is also subject to the authority of the court in the respondent's home state to request that the emergency proceeding be dismissed. The theory here is that the emergency appointment in the temporary location should not be converted into a de facto permanent appointment through repeated temporary appointments.

“Emergency” is specifically defined in Section 201(a)(1).

Because of the great variation among the states on how an emergency is defined and its important role in conferring jurisdiction, the drafters of this Act concluded that adding a uniform definition of emergency was essential. The definition does not preclude an enacting jurisdiction from appointing a guardian under an emergency guardianship statute with a different or broader test of emergency if the court otherwise has jurisdiction to make an appointment under Section 203.

Subsection (a)(2) grants a court jurisdiction to issue a protective order with respect to real and tangible personal property located in the state even though the court does not otherwise have jurisdiction. Such orders are most commonly issued when a conservator has been appointed but the protected person owns real property located in another state. The drafters specifically rejected using a general reference to any property located in the state because of the tendency of some courts to issue protective orders with respect to intangible personal property such as a bank account where the technical situs of the asset may have little relationship to the protected person.

Subsection (a)(3) is closely related to and is necessary for the effectiveness of Article 3, which addresses transfer of a guardianship or conservatorship to another state. A “Catch-22” arises frequently in such cases. The court in the transferring state will not allow the incapacitated or protected person to move and will not terminate the case until the court in the transferee state has accepted the matter. But the court in the transferee state will not accept the case until the incapacitated or protected person has physically moved and presumably become a resident of the transferee state. Subsection (a)(3), which grants the court in the transferee state limited jurisdiction to consider a petition requesting transfer of a proceeding from another state, is intended to unlock the stalemate.

Not included in this section but a provision also conferring special jurisdiction on the court is Section 105(b), which grants the court jurisdiction to respond to a request for assistance from a court of another state.

SECTION 205. EXCLUSIVE AND CONTINUING JURISDICTION. Except as otherwise provided in Section 204, a court that has appointed a guardian or issued a protective order consistent with this act has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

Alabama Comment

This section is identical to Section 205 of the Uniform Act. It is similar in concept to the Alabama Uniform Child Custody Jurisdiction and Enforcement Act. Ala. Code § 30-3B-202. As noted in the uniform comment below, many of the definitions contained in this section are based upon definitions used in the Uniform Child Custody Jurisdiction and Enforcement Act, codified at Section 30-3B-202 of the Alabama Code.

Uniform Comment

While this Act relies heavily on the Uniform Child Jurisdiction and Enforcement Act (1997) for many basic concepts, the identity is not absolute. Section 202 of the UCCJEA specifies a variety of circumstances whereby a court can lose jurisdiction based on loss of physical presence by the child and others, loss of a significant connection, or

unavailability of substantial evidence. Section 203 of the UCCJEA addresses the jurisdiction of the court to modify a custody determination made in another state. Nothing comparable to either UCCJEA section is found in this Act. Under this Act, a guardianship or protective order may be modified only upon request to the court that made the appointment or issued the order, which retains exclusive and continuing jurisdiction over the proceeding. Unlike child custody matters, guardianships and protective proceedings are ordinarily subject to continuing court supervision. Allowing the court's jurisdiction to terminate other than by its own order would open the possibility of competing guardianship or conservatorship appointments in different states for the same person at the same time, the problem under current law that enactment of this Act is designed to avoid. Should the incapacitated or protected person and others with an interest in the proceeding relocate to a different state, the appropriate remedy is to seek transfer of the proceeding to the other state as provided in Article 3.

The exclusive and continuing jurisdiction conferred by this section only applies to guardianship orders made and protective orders issued under Section 203. Orders made under the special jurisdiction conferred by Section 204 are not exclusive. And as provided in Section 204(b), the jurisdiction of a court in a state other than the home state to appoint a guardian in an emergency is subject to the right of a court in the home state to request that the proceeding be dismissed and any appointment terminated.

Article 3 authorizes a guardian or conservator to petition to transfer the proceeding to another state. Upon the conclusion of the transfer, the court in the accepting state will appoint the guardian or conservator as guardian or conservator in the accepting state and the court in the transferring estate will terminate the local proceeding,

whereupon the jurisdiction of the transferring court terminates and the court in the accepting state acquires exclusive and continuing jurisdiction as provided in Section 205.

SECTION 206. APPROPRIATE FORUM.

(a) A court of this state having jurisdiction under Section 203 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

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

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

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

the respondent has occurred or is likely to occur and

which state could best protect the respondent from the abuse, neglect, or exploitation;

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

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

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

(6) the nature and location of the evidence;

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

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

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

Alabama Comment

This section is identical to the Uniform Act. As noted in the uniform comment below, many of the definitions contained in this section are based upon definitions used in the Uniform Child Custody Jurisdiction and Enforcement Act, codified at Section 30-3B-207 of the Alabama Code.

Uniform Comment

This section authorizes a court otherwise having jurisdiction to decline jurisdiction on the basis that a court in another state is in a better position to make a guardianship or protective order determination. The effect of a declination of jurisdiction under this section is to rearrange the priorities specified in Section 203. A court of the home state may decline in favor of a court of a significant-connection or other state and a court in a significant-connection state may decline in favor of a court in another significant-connection or other state. The court declining jurisdiction may either dismiss or stay the proceeding. The court may also impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

This section is similar to Section 207 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) except that the factors in Section 206(c) of this Act have been adapted to address issues most commonly encountered in adult guardianship and protective proceedings as opposed to child custody determinations.

Under Section 203(2)(B), the factors specified in subsection (c) of this section are to be employed in determining whether a court of a significant-connection state may assume jurisdiction when a petition has not been filed in the

respondent's home state or in another significant-connection state. Under Section 207(a)(3)(B), the court is to consider these factors in deciding whether it will retain jurisdiction when unjustifiable conduct has occurred.

SECTION 207. JURISDICTION DECLINED BY REASON OF CONDUCT.

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

(1) decline to exercise jurisdiction;

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

(3) continue to exercise jurisdiction after

considering:

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

(B) whether it is a more appropriate forum than the court of any other state under the factors set forth in Section 206(c); and

(C) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 203.

(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses,

Subsection (a) gives the court authority to fashion an appropriate remedy when it has acquired jurisdiction because of unjustifiable conduct. The court may decline to exercise jurisdiction; exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct; or continue to exercise jurisdiction after considering several specified factors. Under subsection (a), the unjustifiable conduct need not have been committed by a party.

Subsection (b) authorizes a court to assess costs and expenses, including attorney's fees, against a party whose unjustifiable conduct caused the court to acquire jurisdiction. Subsection (b) applies only if the unjustifiable conduct was committed by a party and allows for costs and expenses to be assessed only against that party. Similar to Section 208 of the UCCJEA, the court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of the state unless authorized by other law.

SECTION 208. NOTICE OF PROCEEDING. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were

brought in the respondent's home state, if any. The notice must be given in the same manner as notice is required to be given in this state, pursuant to Section 26-2A-50 (Alabama Uniform Guardianship and Protective Proceedings Act).

Alabama Comment

This section is similar to Section 208 of the Uniform Act with the additional language in the last sentence to make the manner of giving notice identical to that in the Alabama Uniform Guardianship and Protective Proceedings Act.

Uniform Comment

While this Act tries not to interfere with a state's underlying substantive law on guardianship and protective proceedings, the issue of notice is fundamental. Under this section, when a proceeding is brought other than in the respondent's home state, the petitioner must give notice in the method provided under local law not only to those entitled to notice under local law but also to the persons required to be notified were the proceeding brought in the respondent's home state. Frequently, the respective lists of persons to be notified will be the same. But where the lists are different, notice under this section will assure that someone with a right to assert that the home state has a primary right to jurisdiction will have the opportunity to make that assertion.

SECTION 209. PROCEEDINGS IN MORE THAN ONE STATE. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order

limited to property located in this state under Section 204(a)(1) or (a)(2), if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under Section 203, it may proceed with the case unless a court in another state issues an order establishing ~~acquires~~ jurisdiction under provisions similar to Section 203 before the appointment or issuance of an ~~the~~ order by the court in this state.

(2) If the court in this state does not have jurisdiction under Section 203, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

Alabama Comment

This section is very similar to Section 209 of the Uniform Act. Subsection (1) has been modified to require the issuance of an order establishing another state's jurisdiction before Alabama is precluded from proceeding.

Uniform Comment

Similar to Section 206 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), this section addresses the issue of which court has the right to proceed when proceedings for the same respondent are brought in more than one state. The provisions of this section, however, have been tailored to the needs of adult guardianship and protective proceedings and the particular jurisdictional provisions of this Act. Emergency guardianship appointments and protective proceedings with respect to property in other states (Sections 204(a)(1) and (a)(2)) are excluded from this section because the need for dual appointments is frequent in these cases; for example, a petition will be brought in the respondent's home state but emergency action will be necessary in the place where the respondent is temporarily located, or a petition for the appointment of a conservator will be brought in the respondent's home state but real estate located in some other state needs to be brought under management.

Under the Act only one court in which a petition is pending will have jurisdiction under Section 203. If a petition is brought in the respondent's home state, that court has jurisdiction over that of any significant-connection or other state. If the petition is first brought in a significant-connection state, that jurisdiction will be lost if a petition is later brought in the home state prior to an appointment or issuance of an order in the significant-connection state. Jurisdiction will also be lost in the significant-connection state if the respondent has

a home state and an objection is filed in the significant-connection state that jurisdiction is properly in the home state. If petitions are brought in two significant-connection states, the first state has a right to proceed over that of the second state, and if a petition is brought in any other state, any claim to jurisdiction of that state is subordinate to that of the home state and all significant-connection states.

Under this section, if the court has jurisdiction under Section 203, it has the right to proceed unless a court of another state acquires jurisdiction prior to the first court making an appointment or issuing a protective order. If the court does not have jurisdiction under Section 203, it must defer to the court with jurisdiction unless that court determines that the court in this state is the more appropriate forum and it thereby acquires jurisdiction. While the rules are straightforward, factual issues can arise as to which state is the home state or significant-connection state. Consequently, while under Section 203 there will almost always be a court having jurisdiction to proceed, reliance on the communication, court cooperation, and evidence gathering provisions of Sections 104-106 will sometimes be necessary to determine which court that might be.

SECTION 210. INFORMATION TO BE SUBMITTED

TO COURT.

(a) Except as otherwise provided in this section, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the respondent's present address or whereabouts, the places and

addresses where the respondent has lived during the last five years. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the guardianship or conservatorship of the respondent and, if so, identify the court, the case number, and the date of the guardianship or conservatorship determination, if any;

(2) Knows of any proceeding that could affect the current proceeding, including, but not limited to, proceedings for the establishment, modification, termination or enforcement of a protective order, and, if so, identify the court, the case number, and the nature of the proceeding;

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the respondent, and, if so, the names and addresses of any such person; and

(4) Knows the names and addresses of any person not a party to the proceeding who holds an appointment or alternate appointment as legal agent of the respondent and, if so, the names and addresses of any such person;

(b) If the information required by subsection (a) is not furnished, the court, upon motion of a party or it owns motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection (a)(1) through (4) is in the affirmative, the declarant shall give additional information under oath as may be required by the court. The court may examine the parties and other persons under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could

affect the current proceeding.

(e) If a party alleges in an affidavit or pleading under oath that the health, safety, or liberty of a party or incapacitated person would be jeopardized by disclosure of the present address or whereabouts of a party or incapacitated person, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or incapacitated person and determines that the disclosure is in the interest of justice.

Alabama Comment

Section 210 of this Act was added by Alabama and no equivalent provision exists under the Uniform Act. The purpose of this provision is to insure that accurate and complete information concerning pending proceedings is submitted to the court in a timely manner. It also insures that sufficient facts are presented to allow the court to make an initial determination concerning its jurisdiction under the Act.

The affidavit required by this section is based upon the UCCJEA affidavit required by Section 30-3B-209 (1975). As noted in the comments to that code provision, this provision allows for the nondisclosure of information when disclosure

might place the incapacitated individual at risk.

A sample affidavit which meets the requirements of this section follows. Although the use of this specific form is not mandated by this section, the form and substance of the affidavit should substantially follow this example.

IN THE _____ COURT OF _____ COUNTY, ALABAMA

-----)

In the matter of:)
)
)

Case No.: _____

An (Alleged) Incapacitated Person)

[Respondent]

**INFORMATIONAL AFFIDAVIT
UNIFORM GUARDIANSHIP AND PROTECTIVE
PROCEEDINGS
JURISDICTIONAL ACT**

[**Note:** Before completing this form, please read the
Instructions and comments on the last page.]

This affidavit is executed pursuant to Ala. Code § XX-XX-210, et seq. (1975), otherwise known as the Alabama Uniform Guardianship and Protective Proceedings Jurisdictional Act; and

Now comes, _____, the undersigned
Petitioner, (whose current address is: _____),
and upon first being placed under oath, does thereby aver and
provide the following:

RESPONDENT INFORMATION -

Name of respondent: _____
Date of Birth: _____

Current Address or location: _____

Respondent has lived at the following address(es) during the past five (5) years:

INFORMATION ABOUT OTHER PROCEEDINGS AND PARTIES:

1. Have you petitioned in any way in any other proceeding concerning guardianship or conservatorship for the respondent? Yes_____ No_____

(If your answer is "Yes", please provide the following information. Please attach additional sheets if necessary for more than one proceeding.)

Name of Court: _____

Case No. _____

Order Date: _____

Results or disposition: (describe ruling or attach a copy of court order). _____

If order did issue, is the order or other ruling, still applicable: Yes___ No___

2. Do you have knowledge of any proceeding which could affect the current proceeding, including but not limited to proceedings to establish, modify, terminate or enforce a protective order? Yes _____ No _____

If answering "Yes", please provide the following information. Please attach additional sheets if necessary for more than one proceeding.)

Name of Court: _____
Case No. _____
Type of Proceeding: _____
Status of the proceedings and orders issued, including
the next date set for hearing: _____

3. Do you know the name and address of any person or entity, not a party to this proceeding, who has physical custody of the respondent? Yes _____ No _____

If answering "Yes", please provide the following information:

Name(es): _____
Address: _____

Under what authority, if known, does this person or entity have the physical custody of the subject respondent? Please provide as much information as possible, including the name(s) and address(es) of other parties who may have this information.

4. Do you know the name and address of any person or entity, not a party to this proceeding, who holds an appointment or alternate appointment as legal agent, payee, power of attorney, or the like, on behalf of the said respondent?

Yes _____ No _____

If answering "Yes", please provide the following information:

Name: _____

Address: _____

Please list details of such, if known, and attach a copy of any document which you feel supports this information or which you feel should be provided in this proceeding for the Court to consider. _____

STATEMENT AS TO DISCLOSURE OF INFORMATION:

Do you feel, based on your knowledge and information, that the disclosure of the name and current address of the respondent would jeopardize the health, safety, or liberty of a party and/or the respondent?

Yes _____ No _____

If your answer is "Yes", please state the reasons for your opinion and the name of the party or parties, including the respondent if applicable, who may be placed in jeopardy. Please be as specific as possible in your answer.

Signed (date) _____)
Affiant

STATE OF _____)
COUNTY OF _____)
_____)

I, the undersigned authority, a Notary Public in and for said County and State, do hereby certify that

_____, whose name is signed to the foregoing document as the Affiant, and who is known to me, acknowledged before me on this day that, being informed of the contents of this Affidavit, ____ executed the same voluntarily on the day the same bears date.

Sworn to and subscribed before me this ____ day of _____, 20____.

(Seal)

Notary Public
My Commission expires:

INSTRUCTIONS, ETC. (Please read before completing form)

- A. **PLEASE NOTE** that if the information required by subsection (a) of said Code Section (Items 1-4 in this form) is not furnished, upon motion of a party, or on the Court’s own motion, the proceedings may be stayed until such information is furnished;

- B. **PLEASE NOTE FURTHER** that the above information shall be reviewed by the Court. In doing so, the Affiant may be requested and required to provide more details, clarifications or additional information, and further, may be required to be examined under oath by the Court. If appropriate, after Court review and if sufficient reason is provided above, the information contained herein, or parts thereof, may be placed under seal, or as the Court may direct, with disclosure only permitted under Court order.

- C. **PLEASE** attach any additional pages as needed to complete the information being provided along with copies of any documents found necessary and appropriate for said purpose or to explain or confirm any statements being made herein.

ARTICLE 3

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

SECTION 301. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE.

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

(b) Notice of a petition under subsection (a) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator pursuant to Section 26-2A-103 (1975) as required by Section 26-2A-50 (Alabama Uniform Guardianship and Protective Proceedings Act).

(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).

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

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

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

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

(e) The court shall issue a provisional order granting

a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in Section 201(b);

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

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

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

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to Section 302; and

(2) the documents required to terminate a guardianship or conservatorship in this state.

(g) The court may appoint a guardian ad litem to represent the best interests of the respondent in any proceeding initiated by petition under subsection (a) and may require prepayment of guardian ad litem fees.

Alabama Comment

This section is similar to Section 301 of the Uniform Act except for the additional language in subsection (b) and the addition of subsection (g). The language in subsection (b) was added to make the notice provision consistent with the Alabama Uniform Guardianship and Protective Proceedings Act.

Subsection (g) was added to insure that the Act clearly authorized the appointment of a guardian ad litem to represent the interests of the incapacitated person in any interstate guardianship or conservatorship dispute. Furthermore, it is intended that the guardian ad litem represent the best interests of the respondent.

Under subsection (f)(2), prior to confirming the transfer and termination of a guardianship or conservatorship under this section, the Court shall comply with the provisions of the Uniform Guardianship and Protective Proceedings Act concerning the termination of guardianship and conservatorship proceedings. See Ala. Code §§ 26-2A-79, 26-2A-81, 26-2A-109 and 26-2A-147 (1975).

General Uniform Comment to Article 3

While this article consists of two separate sections, they are part of one integrated procedure. Article 3 authorizes a guardian or conservator to petition the court to transfer the guardianship or conservatorship proceeding to a court of another state. Such a transfer is often appropriate when the incapacitated or protected person has moved or has been placed in a facility in another state, making it impossible for the original court to adequately monitor the proceeding. Article 3 authorizes a transfer of a guardianship, a conservatorship, or both. There is no requirement that both categories of proceeding be administered in the same state.

Section 301 addresses procedures in the transferring state. Section 302 addresses procedures in the accepting state.

A transfer begins with the filing of a petition by the guardian or conservator as provided in Section 301(a). Notice of this petition must be given to the persons who would be entitled to notice were the petition a petition for an original appointment. Section 301(b). A hearing on the petition is required only if requested or on the court's own motion. Section 301(c). Assuming the court in the transferring state is satisfied that the grounds for transfer stated in Section 301(d) (guardianship) or 301(e) (conservatorship) have been met, one of which is that the court is satisfied that the court in the other state will accept the case, the court must issue a provisional

order approving the transfer. The transferring court will not issue a final order dismissing the case until, as provided in Section 301(f), it receives a copy of the provisional order from the accepting court accepting the transferred proceeding.

Following issuance of the provisional order by the transferring court, a petition must be filed in the accepting court as provided in Section 302(a). Notice of that petition must be given to those who would be entitled to notice of an original petition for appointment in both the transferring state and in the accepting state. Section 302(b). A hearing must be held only if requested or on the court's own motion. Section 302(c). The court must issue a provisional order accepting the case unless it is established that the transfer would be contrary to the incapacitated or protected person's interests or the guardian or conservator is ineligible for appointment in the accepting state. Section 302(d). The term "interests" as opposed to "best interests" was chosen because of the strong autonomy values in modern guardianship law. Should the court decline the transfer petition, it may consider a separately brought petition for the appointment of a guardian or issuance of a protective order only if the court has a basis for jurisdiction under Sections 203 or 204 other than by reason of the provisional order of transfer. Section 302(h).

The final steps are largely ministerial. Pursuant to Section 301(f), the provisional order from the accepting court must be filed in the transferring court. The transferring court will then issue a final order terminating the proceeding, subject to local requirements such as filing of a final report or account and the release of any bond. Pursuant to Section 302(e), the final order terminating the proceeding in the transferring court must then be filed in the accepting court, which will then convert its provisional order accepting the case into a final order appointing the petitioning guardian or conservator as guardian or conservator in the accepting state.

Because guardianship and conservatorship law and practice will likely differ between the two states, the court in the accepting state must within 90 days after issuance of a final order determine whether the guardianship or conservatorship needs to be modified to conform to the law of the accepting state. Section 302(f). The number “90” is placed in brackets to encourage states to coordinate this time limit with the time limits for other required filings such as guardianship or conservatorship plans. This initial period in the accepting state is also an appropriate time to change the guardian or conservator if there is a more appropriate person to act as guardian or conservator in the accepting state. The drafters specifically did not try to design the procedures in Article 3 for the difficult problems that can arise in connection with a transfer when the guardian or conservator is ineligible to act in the second state, a circumstance that can occur when a financial institution is acting as conservator or a government agency is acting as guardian. Rather, the procedures in Article 3 are designed for the typical case where the guardian or conservator is legally eligible to act in the second state. Should that particular guardian or conservator not be the best person to act in the accepting state, a change of guardian or conservator can be initiated once the transfer has been secured.

The transfer procedure in this article responds to numerous problems that have arisen in connection with attempted transfers under the existing law of most states. Sometimes a court will dismiss a case on the assumption a proceeding will be brought in another state, but such proceeding is never filed. Sometimes a court will refuse to dismiss a case until the court in the other state accepts the matter, but the court in the other state refuses to consider the petition until the already existing guardianship or conservatorship has been terminated. Oftentimes the court will conclude that it is without jurisdiction to make an appointment until the respondent is physically present in the state, a

problem which Section 204(a)(3) addresses by granting a court special jurisdiction to consider a petition to accept a proceeding from another state. But the most serious problem is the need to prove the case in the second state from scratch, including proving the respondent's incapacity and the choice of guardian or conservator. Article 3 eliminates this problem. Section 302(g) requires that the court accepting the case recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator, if otherwise eligible to act in the accepting state.

**SECTION 302. ACCEPTING GUARDIANSHIP OR
CONSERVATORSHIP TRANSFERRED FROM ANOTHER
STATE.**

(a) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to Section 301, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include the following:

(1) a certified copy of the other state's provisional order of transfer.

(2) an inventory of the protected person's estate as of the date of the petition including certified records

of all bank accounts in the protected person's estate as of the date of the petition;

(3) proof of the conservator's bond; and

(4) any final accounting of the protected person's estate which has been submitted in the prior jurisdiction. If no such accounting was required by the transferring court, the petitioner must prepare and submit an accounting prior to acceptance.

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

(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 proceeding, the court shall hold a hearing on a petition filed pursuant to

subsection (a).

(d) The court shall issue ~~an~~ a provisional order ~~provisionally~~ granting a petition filed under subsection (a) unless:

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

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

(3) the Petitioner fails to comply with the provisions of subsection (a).

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 301 transferring the proceeding to this state.

(f) Not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state. Such modification may include, among other things, the requirement of a bond, an inventory or an accounting, pursuant to Sections 26-2A-139 to 26-2A-140 and 26-2A-146 to 26-2A-147.

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

(h) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under Sections 26-2A-1, et. seq. if the court has

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

Alabama Comment

This section is derived from Section 302 of the Uniform Act with several substantial changes. Subsection (a) was expanded to include a list of what must be included with the petition in addition to a certified copy of the other state's provisional order of transfer.

Subsection (d)(3) was added to insure compliance with subsection (a).

The last sentence of subsection (f) was added to enumerate some of the modification that may be required by the court to conform the guardianship or conservatorship to the laws of Alabama.

A sample "General Information and Asset Summary Sheet" follows. Although the use of this specific form is not mandated by this section, it is designed to provide the court with some of the information required under subsection (a).

IN THE _____ COURT OF _____ COUNTY,
ALABAMA

_____)
In the matter of:)
)
)
_____)
An (Alleged) Incapacitated Person)
 [Respondent])
_____)

**General Information and Asset Summary Sheet
Uniform Guardianship and Protective Proceedings
Jurisdictional Act**

This information sheet must be completed and filed with the Probate Court along with the Informational Affidavit (Form No....) and other appropriate pleading(s) requesting the establishment of a Guardianship and/or Conservatorship, or other protective proceeding where the respondent/ward is, or was previously, a resident of another state or foreign jurisdiction in which proceedings may have been established.

Respondent:

Name of respondent/ward: _____
Address: _____
Date of Birth: _____

Petitioner:

Name of petitioner:

Address:

Date of Birth: _____

Court Information:

Name and other information about Court having current or prior control over the person and/or assets of the respondent/ward:

Name of Court: _____

Address: _____

Case Number: _____

Status of Case: _____

Next hearing date, if any, _____

Attach copies of docket sheet history or summary of case activity.

Is there pending before the above named Court a final or partial settlement and accounting? Yes___ No___ If yes, please provide a copy of such petition and state when the settlement is scheduled to be heard by said Court.

If a final hearing has been held, provide a copy of the final accounting and order from the Court transferring the estate to Alabama. **Please note:** Copies of all court orders must be certified by the issuing court.

Attorneys:

Name and address of attorneys involved or representing the petitioner(s):

Name and address of GAL and/or Court Representative appointed for the ward in said Court (current or past):

Guardian ad Litem: _____

Court Representative: _____

Assets/Inventory: As of (date) _____

Please state the value of the assets of the said ward/respondent:

Real property in Alabama \$ _____

Real property located outside of Alabama \$ _____

Personal property in Alabama \$ _____

Personal property located outside of Alabama \$ _____

Liquid assets (cash, bonds, etc.) \$ _____

Attach additional sheets to further explain or list information regarding the above values as necessary, or attach a copy of any existing inventory of ward's assets.

List the name, address and account number for each bank or financial institution, including brokerage accounts and trusts, where assets of the ward/respondent are located and the value or current balance in each:

Trust Assets:

Does the respondent/ward have an interest in any trust assets, either directly, or indirectly, contingent or remainder, etc? Yes ____ No ____ . If yes, please provide details of same as follows, including the value, or estimated value, of such asset(s), the name and address of the trustee(s) or institution(s) holding the trust, a copy of the trust document(s) if available, and the name of any court that has conducted hearings on same or has exercised jurisdiction over such trust(s).

Other assets:

Please list any other assets or contingent assets of the ward/respondent, including any pending or anticipated causes of actions or claims which have not been disclosed above:

Signed (date) _____)
Affiant

STATE OF _____)
COUNTY OF _____)
_____)

I, the undersigned authority, a Notary Public in and for said County and State, do hereby certify that _____, whose name is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, being informed of the contents of

this document, executed the same voluntarily on the day the same bears date.

Sworn to and subscribed before me this ___ day of _____, 20_____.

(Seal)

Notary Public
My Commission expires:

ARTICLE 4

~~REGISTRATION~~ RECORDING AND RECOGNITION OF ORDERS FROM OTHER STATES

SECTION 401. ~~REGISTRATION~~ RECORDING OF GUARDIANSHIP ORDERS. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may ~~register~~ record the guardianship order in this state by recording ~~filing~~ as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

Alabama Comment

This section is identical to Section 401 of the Uniform Act except for changing the word “register” to “record” and changing the word “filing” to “recording”.

General Uniform Comment to Article 4

Article 4 is designed to facilitate the enforcement of guardianship and protective orders in other states. This

article does not make distinctions among the types of orders that can be enforced. This article is applicable whether the guardianship or conservatorship is full or limited. While some states have expedited procedures for sales of real estate by conservators appointed in other states, few states have enacted statutes dealing with enforcement of guardianship orders, such as when a care facility questions the authority of a guardian appointed in another state. Sometimes, these sorts of refusals necessitate that the proceeding be transferred to the other state or that an entirely new petition be filed, problems that could often be avoided if guardianship and protective orders were entitled to recognition in other states.

Article 4 provides for such recognition. The key concept is registration. Section 401 provides for registration of guardianship orders, and Section 402 for registration of protective orders. Following registration of the order in the appropriate county of the other state, and after giving notice to the appointing court of the intent to register the order in the other state, Section 403 authorizes the guardian or conservator to thereafter exercise all powers authorized in the order of appointment except as prohibited under the laws of the registering state.

The drafters of the Act concluded that the registration of certified copies provides sufficient protection and that it was not necessary to mandate the filing of authenticated copies.

SECTION 402. REGISTRATION RECORDING OF PROTECTIVE ORDERS. If a conservator has been appointed in another state and a petition for a protective

order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to ~~register~~ record, may ~~register~~ record the protective order in this state by recording ~~filing~~ as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

Alabama Comment

This section is identical to Section 402 of the Uniform Act except for changing the word “register” to “record” and the word “filing” to “recording”.

SECTION 403. EFFECT OF REGISTRATION

RECORDING.

(a) Upon ~~registration~~ recording of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and

proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

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

Alabama Comment

This section is identical to Section 403 of the Uniform Act except for changing from registered orders to recorded orders.

ARTICLE 5

MISCELLANEOUS PROVISIONS

SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

~~SECTION 503. AMENDMENTS REPEALS.~~ ~~The following acts and parts of acts are hereby repealed:~~

~~SECTION 504. TRANSITIONAL PROVISION.~~

~~(a) This act applies to guardianship and protective proceedings begun on or after [the effective date].~~

~~(b) Articles 1, 3, and 4 and Sections 501 and 502 apply to proceedings begun before [the effective date] regardless of whether a guardianship or protective order has been issued.~~

~~Uniform Comment~~

~~This Act applies retroactively to guardianships and conservatorships in existence on the effective date. The guardian or conservator appointed prior to the effective date of the Act may petition to transfer the proceeding to another state under Article 3 and register and enforce the order in other states pursuant to Article 4. The jurisdictional provisions of Article 2 also apply to proceedings begun on or after the effective date. What the Act does not do is change the jurisdictional rules midstream for petitions filed prior to the effective date for which an appointment has not been made or order issued as of the effective date. Jurisdiction in such cases is governed by prior law. Nor does the Act affect the validity of already existing appointments even though the court might not have had jurisdiction had this Act been in effect at the time the appointment was made.~~

~~SECTION 505 503. EFFECTIVE DATE. This act takes effect January 1, 2011.~~

SECTION 506 504. RULE OF CONSTRUCTION.

This act shall be read in pari materia with other Alabama statutes. More specifically, Nothing in the act shall be construed as repealing any portion of Sections 26-2A-1, et. seq. (the Alabama Uniform Guardianship and Protective Proceedings Act), unless specifically addressed.