Senate

General Assembly

File No. 518

February Session, 2010

Substitute Senate Bill No. 426

Senate, April 13, 2010

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE CONNECTICUT UNIFORM ADULT PROTECTIVE PROCEEDINGS JURISDICTION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2010*) Sections 1 to 23, inclusive, of this act may be cited as the "Connecticut Uniform Adult Protective Proceedings Jurisdiction Act."

Sec. 2. (NEW) (*Effective October 1, 2010*) As used in sections 1 to 23, inclusive, of this act:

(1) "Adult" means an individual who is at least eighteen years of age.

(2) "Conservator" means (A) a conservator of the estate, as defined in section 45a-644 of the general statutes, as amended by this act, or (B) a person, except a hospital or nursing home facility, appointed by a court outside of this state to administer the property of an adult.

(3) "Guardian" means (A) a conservator of the person, as defined in

section 45a-644 of the general statutes, as amended by this act, or (B) a person, except a hospital or nursing home facility, appointed by a court outside of this state to make decisions regarding the person of an adult. "Guardian" does not include a guardian, as defined in section 45a-604 of the general statutes, a plenary guardian of a person with mental retardation, as defined in section 45a-669 of the general statutes, or a limited guardian of a person with mental retardation, as defined in section 45a-669 of the general statutes.

(4) "Guardianship order" means (A) an order appointing a guardian pursuant to part IV of chapter 802h of the general statutes, or (B) an order by a court outside of this state appointing a guardian.

(5) "Guardianship proceeding" means (A) a judicial proceeding held pursuant to part IV of chapter 802h of the general statutes in which an order for the appointment of a guardian is sought or has been issued, or (B) a judicial proceeding held outside of this state in which an order for the appointment of a guardian is sought or has been issued.

(6) "Incapacitated person" means a conserved person, as defined in section 45a-644 of the general statutes, as amended by this act, or an adult for whom a guardian has been appointed in a judicial proceeding held outside of this state.

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

(8) "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.

(9) "Protected person" means a conserved person, as defined in section 45a-644 of the general statutes, as amended by this act, or an adult for whom a protective order has been issued outside of this state.

(10) "Protective order" means an order appointing a conservator of the estate pursuant to part IV of chapter 802h of the general statutes, or an order by a court outside of this state appointing a conservator or other order by a court related to the management of an adult's property.

(11) "Protective proceeding" means a judicial proceeding held pursuant to part IV of chapter 802h of the general statutes or a judicial proceeding held outside of this state in which a protective order is sought or has been issued.

(12) "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) "Respondent" means a respondent, as defined in section 45a-644 of the general statutes, as amended by this act, or an adult for whom a protective order or the appointment of a guardian is sought outside of this state.

(14) "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.

Sec. 3. (NEW) (*Effective October 1, 2010*) (a) Sections 1 to 23, inclusive, of this act, and sections 45a-644 of the general statutes, as amended by this act, 45a-648 of the general statutes, as amended by this act, and 45a-649 of the general statutes, as amended by this act, apply to guardianship proceedings and protective proceedings begun on or after October 1, 2010.

(b) Sections 1 to 7, inclusive, of this act and sections 17 to 23, inclusive, of this act apply to guardianship proceedings and protective proceedings begun before October 1, 2010, regardless of whether a guardianship order or protective order has been issued.

Sec. 4. (NEW) (*Effective October 1, 2010*) A court of probate may treat

a foreign country as if it were a state for the purpose of applying sections 1 to 18, inclusive, and sections 22 and 23 of this act.

Sec. 5. (NEW) (*Effective October 1, 2010*) (a) A court of probate may communicate with a court in another state concerning a proceeding arising under sections 1 to 23, inclusive, of this act or part IV of chapter 802h of the general statutes. The court of probate shall allow the parties to participate in the communication.

(b) The court of probate shall make a record of the communication.

(c) The court of probate shall inform the parties of any such communication not later than seven business days after the date of such communication and shall grant the parties access to the record of the communications. The court of probate shall grant the parties the opportunity to present facts and legal arguments before issuing a decision on jurisdiction.

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

Sec. 6. (NEW) (*Effective October 1, 2010*) (a) In a proceeding for involuntary representation in this state, a court of probate may request, to the extent permitted or required by the laws of this state, 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 the procedures of that state;

(3) Order that an evaluation or assessment be made of the respondent, subject to the provisions of section 45a-132a of the general statutes;

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

(5) Forward to the Court of Probate a certified copy of the transcript or other record of a hearing under subdivision (1) of this subsection, or any other proceeding, any evidence otherwise produced under subdivision (2) of this subsection, and any evaluation or assessment prepared in compliance with an order issued under subdivision (3) or (4) of this subsection;

(6) Issue an 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 person or protected person, subject to the provisions of subsection (e) of section 45a-649 of the general statutes, as amended by this act, subsection (e) of section 45a-650 of the general statutes or subsection (g) of section 45a-656b of the general statutes; or

(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 CFR 160.103, as amended from time to time, subject to the provisions of subsection (g) of section 45a-649a.

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

Sec. 7. (NEW) (*Effective October 1, 2010*) (a) In a proceeding for involuntary representation in this state, 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. A court of probate 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.

136 (b) In a proceeding for involuntary representation in this state, a
137 court of probate may permit a witness located in another state to be
138 deposed or to testify by telephone or audiovisual or other electronic
139 means. A court of probate shall cooperate with the court of the other
140 state in designating an appropriate location for the deposition or
141 testimony.

142 (c) Documentary evidence transmitted from another state to a court
143 of probate by technological means that does not produce an original
144 writing may not be excluded from evidence on an objection based on
145 the best evidence rule.

146 Sec. 8. (NEW) (*Effective October 1, 2010*) (a) As used in this section
147 and sections 9 to 16, inclusive, of this act:

148 (1) "Emergency" means a circumstance that will result in immediate
149 and irreparable harm to the mental or physical health or financial or
150 legal affairs of the respondent and includes a circumstance in which a
151 temporary conservator may be appointed and may serve under
152 subsection (a) of section 45a-654 of the general statutes;

153 (2) "Home state" means the state in which the respondent was
154 physically present, including any period of temporary absence, for at
155 least six consecutive months immediately before the filing of a petition
156 for a protective order or the appointment of a guardian, or, if none, the
157 state in which the respondent was physically present, including any
158 period of temporary absence, for at least six consecutive months
159 ending within the six months prior to the filing of the petition.

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

164 (b) In determining under section 10 of this act and subsection (e) of
165 section 17 of this act whether a respondent has a significant connection
166 with a particular state, the court shall consider:

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

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

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

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

176 Sec. 9. (NEW) (*Effective October 1, 2010*) A proceeding for
177 involuntary representation in this state shall be subject to the
178 provisions of part IV of chapter 802h of the general statutes, except that
179 jurisdiction shall be determined in accordance with sections 8 to 16,
180 inclusive, of this act.

181 Sec. 10. (NEW) (*Effective October 1, 2010*) A court of probate in this
182 state has jurisdiction to appoint a conservator of the person or
183 conservator of the estate for a respondent pursuant to part IV of
184 chapter 802h of the general statutes if:

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

186 (2) On the date a petition for involuntary representation is filed, this
187 state is a significant-connection state, and:

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

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

195 (i) A petition for an appointment or order is not filed in the

196 respondent's home state;

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

199 (iii) The Court of Probate concludes that it is an appropriate forum
200 under the factors set forth in subsection (c) of section 13 of this act;

201 (3) A court of probate in this state does not have jurisdiction under
202 subdivision (1) or (2) of this subsection, the respondent's home state
203 and all significant-connection states have declined to exercise
204 jurisdiction because this state is the more appropriate forum, and
205 jurisdiction in this state is consistent with the statutes of this state and
206 the Constitutions of this state and the United States; or

207 (4) The requirements for special jurisdiction under section 11 of this
208 act are met.

209 Sec. 11. (NEW) (*Effective October 1, 2010*) (a) A court of probate
210 lacking jurisdiction under section 10 of this act has special jurisdiction
211 to do any of the following if the court of probate makes the necessary
212 preliminary findings required under section 45a-654 of the general
213 statutes:

214 (1) Appoint a temporary conservator of the person or a temporary
215 conservator of the estate in an emergency pursuant to subsection (a) of
216 section 45a-654 of the general statutes for a term not exceeding ninety
217 days for a respondent who is physically present in this state; or

218 (2) Appoint a temporary conservator of the person or a temporary
219 conservator of the estate for an incapacitated person or protected
220 person for whom a provisional order to transfer the proceeding from
221 another state has been issued under procedures similar to those in
222 section 17 of this act.

223 (b) If a petition for the appointment of a temporary conservator of
224 the person or a temporary conservator of the estate in an emergency is
225 brought in this state and this state was not the respondent's home state

226 on the date the petition was filed, the court shall dismiss the
227 proceeding at the request of the respondent or the court of the home
228 state, if any, whether dismissal is requested before or after the
229 emergency appointment.

230 Sec. 12. (NEW) (*Effective October 1, 2010*) Except as otherwise
231 provided in section 11 of this act, a court that has appointed a guardian
232 or issued a protective order consistent with the requirements of
233 sections 1 to 23, inclusive, of this act and part IV of chapter 802h of the
234 general statutes has exclusive and continuing jurisdiction over the
235 proceeding until it is terminated by the court or the appointment or
236 order expires by its own terms.

237 Sec. 13. (NEW) (*Effective October 1, 2010*) (a) A court of probate
238 having jurisdiction under section 10 of this act to appoint a conservator
239 of the person or conservator of the estate may decline to exercise its
240 jurisdiction if it determines at any time that a court of another state is a
241 more appropriate forum.

242 (b) If a court of probate declines to exercise its jurisdiction under
243 subsection (a) of this section, the court of probate shall either dismiss
244 the proceeding or stay the proceeding for not more than ninety days to
245 allow for a petition to be filed in a more appropriate forum that has
246 jurisdiction to appoint a guardian or issue a protective order.

247 (c) In determining whether it is an appropriate forum, the Court of
248 Probate shall consider all relevant factors, including:

249 (1) Any expressed preference of the respondent;

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

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

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

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

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

258 (7) The ability of the court in each state to decide the issue in
259 accordance with due process of law and without undue delay;

260 (8) The procedures necessary to present evidence;

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

263 (10) If an appointment were made, the court's ability to monitor the
264 conduct of the conservator of the person or conservator of the estate
265 within this state and outside of this state, if applicable.

266 (d) The court shall make specific written findings as to the basis for
267 its determination of appropriate forum.

268 Sec. 14. (NEW) (*Effective October 1, 2010*) (a) If at any time a court of
269 probate determines that it acquired jurisdiction to appoint a guardian
270 or issue a protective order because of unjustifiable conduct of a party,
271 the court shall:

272 (1) Decline to exercise jurisdiction and dismiss the case if the court
273 has not entered an order in the case; or

274 (2) Rescind any order issued in the case and dismiss the case, except
275 that, prior to dismissing the case, the court may exercise limited
276 jurisdiction for not more than ninety days for the limited purpose of
277 fashioning an appropriate remedy to avoid immediate and irreparable
278 harm to the mental or physical health or financial or legal affairs of the
279 person for whom a guardian was appointed or who was subject to the
280 protective order to prevent a repetition of the unjustifiable conduct.

281 (b) A court of probate that determines it has acquired or maintained
282 jurisdiction because a party seeking or having sought to invoke its
283 jurisdiction engaged in unjustifiable conduct may assess against that
284 party necessary and reasonable expenses, including attorney's fees,

285 investigative fees, court costs, communication expenses, witness fees
286 and expenses, and travel expenses. The court may not assess fees, costs
287 or expenses of any kind against this state or a governmental
288 subdivision, agency or instrumentality of this state unless authorized
289 by law other than sections 1 to 23, inclusive, of this act.

290 Sec. 15. (NEW) (*Effective October 1, 2010*) If a petition for involuntary
291 representation is brought in this state and this state was not the
292 respondent's home state on the date the petition was filed, in addition
293 to complying with the notice requirements of section 45a-649 of the
294 general statutes, as amended by this act, notice of the petition shall be
295 given to those persons who would be entitled to notice of the petition
296 if a proceeding were brought in the respondent's home state. The
297 notice shall be given in the same manner as notice is required to be
298 given under section 45a-649 of the general statutes, as amended by this
299 act.

300 Sec. 16. (NEW) (*Effective October 1, 2010*) Except for a petition for the
301 appointment of a temporary conservator of the person or a temporary
302 conservator of the estate in an emergency under subdivision (1) of
303 subsection (a) of section 11 of this act, if a petition for involuntary
304 representation is filed in this state and a petition for appointment of a
305 guardian or issuance of a protective order is filed in another state and
306 neither petition has been dismissed or withdrawn, the following rules
307 apply:

308 (1) If the Court of Probate has jurisdiction under section 10 of this
309 act, it may proceed with the case unless a court in another state
310 acquires jurisdiction under provisions similar to those in section 10 of
311 this act before the appointment or issuance of the order.

312 (2) If the Court of Probate does not have jurisdiction under
313 subdivision (1) or (2) of section 10 of this act, whether at the time the
314 petition is filed or at any time before the appointment or issuance of
315 the order, the court shall stay the proceeding and communicate with
316 the court in the other state. If the court in the other state has
317 jurisdiction, the Court of Probate shall dismiss the petition unless the

318 court in the other state determines that the Court of Probate is a more
319 appropriate forum and jurisdiction in this state is consistent with the
320 statutes of this state and the Constitutions of this state and the United
321 States.

322 Sec. 17. (NEW) (*Effective October 1, 2010*) (a) Except for an individual
323 under voluntary representation as provided in section 45a-647 of the
324 general statutes, a conserved person, a conserved person's attorney,
325 conservator of the person, or conservator of the estate appointed in this
326 state or any person who has received notice pursuant to subdivision
327 (2) of subsection (a) of section 45a-649 of the general statutes, as
328 amended by this act, may petition a court of probate to transfer the
329 conservatorship of the person or the conservatorship of the estate, or
330 both, to another state.

331 (b) Notice of a petition under subsection (a) of this section shall be
332 given to the persons that would be entitled to notice of a petition in
333 this state for the appointment of a conservator of the person or
334 conservator of the estate, or both.

335 (c) On the court's own motion or on request of the conservator of the
336 person or conservator of the estate, the conserved person, the
337 conserved person's attorney or other person required to be notified of
338 the petition, the court of probate shall hold a hearing on a petition filed
339 pursuant to subsection (a) of this section.

340 (d) The court of probate shall issue an order provisionally granting a
341 petition to transfer a conservatorship of the person and shall direct the
342 conservator of the person to petition for guardianship in the other state
343 if the court of probate is satisfied that the guardianship will be
344 accepted by the court in the other state and the court finds that:

345 (1) The conserved person is physically present in or is reasonably
346 expected to move permanently to the other state;

347 (2) An objection to the transfer has not been made or, if an objection
348 has been made, the objector has not established that the transfer would

be contrary to the interests of the conserved person, including the reasoned and informed expressed preferences of the conserved person;

(3) Plans for care and services for the conserved person in the other state are reasonable and sufficient, have been made after allowing the conserved person the opportunity to participate meaningfully in decision-making in accordance with the conserved person's abilities, and include assisting the conserved person in removing obstacles to independence, assisting the conserved person in achieving self-reliance, ascertaining the conserved person's views, making decisions in conformance with the conserved person's reasonable and informed expressed preferences, and making all reasonable efforts to make decisions in conformance with the conserved person's expressed health care preferences, including health care instructions and other wishes, if any, described in any validly executed health care instructions or otherwise; and

(4) If the transfer involves the termination of a tenancy or lease of a conserved person, the sale or disposal of any real property or household furnishings of the conserved person, a change in the conserved person's residence or the placement of the conserved person in an institution for long-term care, as defined in section 45a-656b of the general statutes, the court of probate shall ensure that the requirements in section 45a-656b of the general statutes have been met before approving the transfer.

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

(1) The conserved person is physically present in or is reasonably expected to move permanently to the other state, or the conserved person has a significant connection to the other state considering the factors set forth in subsection (b) of section 8 of this act;

(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 conserved person, including the reasoned and informed expressed preferences of the conserved person;

(3) Adequate arrangements will be made for management of the conserved person's property, and that such arrangements shall be made in accordance with subsection (a) of section 45a-655 of the general statutes; and

(4) The transfer is made in accordance with section 45a-656b of the general statutes.

(f) The court of probate shall issue a final order confirming the transfer and terminating the conservatorship of the person or conservatorship of the estate on 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 those in section 18 of this act; and

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

Sec. 18. (NEW) (*Effective October 1, 2010*) (a) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to those in section 17 of this act, the guardian or conservator shall petition the Court of Probate to accept the guardian as a conservator of the person or the conservator as a conservator of the estate. The petition shall include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subsection (a) of this section shall 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 shall be given in the same manner as notice is required to be given under section 45a-649 of the general statutes, as amended by this act.

413 (c) On the court's own motion or on request of the guardian or
414 conservator, the incapacitated person or protected person, or other
415 person required to be notified of the proceeding, the court of probate
416 shall hold a hearing on a petition filed pursuant to subsection (a) of
417 this section.

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

420 (1) An objection is made and the objector establishes that transfer of
421 the proceeding would be contrary to the interests of the incapacitated
422 person or protected person, including the reasoned and informed
423 expressed preferences of the conserved person; or

424 (2) The guardian or conservator is ineligible for appointment as a
425 conservator of the person or conservator of the estate in this state.

426 (e) The court of probate shall issue a final order accepting the
427 proceeding and appointing the guardian or conservator as conservator
428 of the person or conservator of the estate in this state on its receipt
429 from the court from which the proceeding is being transferred of a
430 final order issued under provisions similar to those in section 17 of this
431 act transferring the proceeding to this state.

432 (f) Not later than thirty days before the issuance of a final order
433 accepting the transfer of a guardianship or conservatorship to this
434 state, the court of probate shall insure that (1) the incapacitated person
435 or protected person is represented by counsel in accordance with the
436 provisions of section 45a-649a of the general statutes, and (2) such
437 person receives notice of his or her rights under the laws of this state
438 with respect to such transfer.

439 (g) Not later than ninety days after the issuance of a final order
440 accepting transfer of a guardianship or conservatorship to this state,
441 the court of probate shall determine whether the conservatorship of
442 the person or conservatorship of the estate needs to be modified to
443 conform to the law of this state, and, if so, the court of probate shall

444 order such modifications.

445 (h) In granting a petition under this section, the court of probate
446 shall recognize a guardianship or conservatorship order from the other
447 state, including the determination of the incapacitated person or
448 protected person's incapacity and the appointment of the guardian or
449 conservator, to the extent such order conforms to the law of this state.

450 (i) The denial by a court of probate of a petition to accept a
451 guardianship or conservatorship transferred from another state does
452 not affect the ability of the guardian or conservator to seek involuntary
453 representation under section 45a-648 of the general statutes, as
454 amended by this act, if the court has jurisdiction to grant the
455 involuntary representation other than by reason of the provisional
456 order of transfer.

457 (j) The granting by a court of probate of a petition to accept a
458 guardianship or conservatorship transferred from another state shall:

459 (1) Grant to the incapacitated person or protected person the same
460 rights as if such person had originally had a conservator of the person
461 or conservator of the estate appointed under part IV of chapter 802h of
462 the general statutes, including, but not limited to, the right to review
463 and termination of appointment of a conservator under section 45a-660
464 of the general statutes, and

465 (2) Impose upon the guardian or conservator the same
466 responsibilities and duties imposed upon a conservator of the person
467 or conservator of the estate under the laws of this state.

468 Sec. 19. (NEW) (*Effective October 1, 2010*) (a) If a guardian has been
469 appointed in another state and a petition for the appointment of a
470 conservator of the person is not pending in this state, the guardian
471 appointed in the other state, after giving notice to the appointing court
472 of an intent to register, may register the guardianship order in this
473 state as a conservatorship of the person by filing, as a foreign judgment
474 in the Office of the Probate Court Administrator, certified copies of the

475 order and letters of office.

476 (b) The Office of the Probate Court Administrator shall maintain a
477 registry, accessible by the public, of guardianships registered under
478 subsection (a) of this section.

479 Sec. 20. (NEW) (*Effective October 1, 2010*) (a) If a conservator has been
480 appointed in another state and a petition for the appointment of a
481 conservator of the estate is not pending in this state, the conservator
482 appointed in the other state, after giving notice to the appointing court
483 of an intent to register, may register the protective order in this state as
484 a conservatorship of the estate by filing, as a foreign judgment in the
485 Office of the Probate Court Administrator, certified copies of the order
486 and letters of office and of any bond and may submit certified copies
487 for recordation on the land records in a town in which real property
488 belonging to the protected person is located.

489 (b) The Office of the Probate Court Administrator shall maintain a
490 registry, accessible by the public, of protective orders registered under
491 subsection (a) of this section.

492 Sec. 21. (NEW) (*Effective October 1, 2010*) (a) On registration in this
493 state under section 19 of this act of a guardianship from another state
494 or under section 20 of this act of a protective order from another state,
495 the guardian or conservator may exercise in this state all powers
496 authorized in the order of appointment, except as prohibited under the
497 laws of this state, including maintaining actions and proceedings in
498 this state and, if the guardian or conservator is not a resident of this
499 state, subject to any conditions imposed on nonresident parties. The
500 registration of a guardianship shall lapse one hundred twenty days
501 after such registration, except that the registration may be extended for
502 good cause for an additional one hundred twenty days by the court of
503 probate in this state having jurisdiction over the location within this
504 state where the person under the guardianship is physically located.

505 (b) A court of probate or, to the extent it lacks jurisdiction, the
506 Superior Court may grant any relief available under sections 1 to 23,

507 inclusive, of this act, section 45a-644 of the general statutes, as
508 amended by this act, section 45a-648 of the general statutes, as
509 amended by this act, and section 45a-649 of the general statutes, as
510 amended by this act, and other law of this state to enforce a registered
511 order.

512 Sec. 22. (NEW) (*Effective October 1, 2010*) In applying and construing
513 the provisions of sections 1 to 23, inclusive, of this act, section 45a-644
514 of the general statutes, as amended by this act, section 45a-648 of the
515 general statutes, as amended by this act, and section 45a-649 of the
516 general statutes, as amended by this act, consideration shall be given to
517 the need to promote uniformity of the law with respect to its subject
518 matter among states that enact such uniform provisions, consistent
519 with the need to protect individual civil rights and in accordance with
520 due process.

521 Sec. 23. (NEW) (*Effective October 1, 2010*) This section, sections 1 to
522 22, inclusive, of this act, section 45a-644 of the general statutes, as
523 amended by this act, section 45a-648 of the general statutes, as
524 amended by this act, and section 45a-649 of the general statutes, as
525 amended by this act, modify, limit and supersede the Electronic
526 Signatures in Global and National Commerce Act, 15 USC Section 7001
527 et seq., but do not modify, limit or supersede Section 101 of said act, 15
528 USC Section 7001(a), or authorize electronic delivery of any of the
529 notices described in Section 103 of said act, 15 USC Section 7003(b).

530 Sec. 24. Section 45a-644 of the general statutes is repealed and the
531 following is substituted in lieu thereof (*Effective October 1, 2010*):

532 For the purposes of sections 45a-644 to 45a-663, inclusive, <u>as</u>
533 <u>amended by this act,</u> the following terms shall have the following
534 meanings:

535 (a) "Conservator of the estate" means a person, a municipal or state
536 official, or a private profit or nonprofit corporation except a hospital or
537 nursing home <u>facility</u> as defined in section 19a-521, appointed by the
538 Court of Probate under the provisions of sections 45a-644 to 45a-663,

539 inclusive, as amended by this act, to supervise the financial affairs of a
540 person found to be incapable of managing his or her own affairs or of a
541 person who voluntarily asks the Court of Probate for the appointment
542 of a conservator of the estate, and includes a temporary conservator of
543 the estate appointed under the provisions of section 45a-654.

544 (b) "Conservator of the person" means a person, a municipal or state
545 official, or a private profit or nonprofit corporation, except a hospital
546 or nursing home facility as defined in section 19a-521, appointed by
547 the Court of Probate under the provisions of sections 45a-644 to 45a-
548 663, inclusive, as amended by this act, to supervise the personal affairs
549 of a person found to be incapable of caring for himself or herself or of a
550 person who voluntarily asks the Court of Probate for the appointment
551 of a conservator of the person, and includes a temporary conservator
552 of the person appointed under the provisions of section 45a-654.

553 (c) "Incapable of caring for one's self" or "incapable of caring for
554 himself or herself" means that a person has a mental, emotional or
555 physical condition that results in such person being unable to receive
556 and evaluate information or make or communicate decisions to such
557 an extent that the person is unable, even with appropriate assistance,
558 to meet essential requirements for personal needs.

559 (d) "Incapable of managing his or her affairs" means that a person
560 has a mental, emotional or physical condition that results in such
561 person being unable to receive and evaluate information or make or
562 communicate decisions to such an extent that the person is unable,
563 even with appropriate assistance, to perform the functions inherent in
564 managing his or her affairs, and the person has property that will be
565 wasted or dissipated unless adequate property management is
566 provided, or that funds are needed for the support, care or welfare of
567 the person or those entitled to be supported by the person and that the
568 person is unable to take the necessary steps to obtain or provide funds
569 needed for the support, care or welfare of the person or those entitled
570 to be supported by the person.

571 (e) "Involuntary representation" means the appointment of a

572 conservator of the person or a conservator of the estate, or both, after a
573 finding by the Court of Probate that the respondent is incapable of
574 managing his or her affairs or incapable of caring for himself or herself.

575 (f) "Respondent" means an adult person for whom an application for
576 involuntary representation has been filed or an adult person who has
577 requested voluntary representation.

578 (g) "Voluntary representation" means the appointment of a
579 conservator of the person or a conservator of the estate, or both, upon
580 request of the respondent, without a finding that the respondent is
581 incapable of managing his or her affairs or incapable of caring for
582 himself or herself.

583 (h) "Conserved person" means a person for whom involuntary
584 representation is granted under sections 45a-644 to 45a-663, inclusive,
585 as amended by this act.

586 (i) "Personal needs" means the needs of a person including, but not
587 limited to, the need for food, clothing, shelter, health care and safety.

588 (j) "Property management" means actions to (1) obtain, administer,
589 manage, protect and dispose of real and personal property, intangible
590 property, business property, benefits and income, and (2) deal with
591 financial affairs.

592 (k) "Least restrictive means of intervention" means intervention for a
593 conserved person that is sufficient to provide, within the resources
594 available to the conserved person either from the conserved person's
595 own estate or from private or public assistance, for a conserved
596 person's personal needs or property management while affording the
597 conserved person the greatest amount of independence and self-
598 determination.

599 Sec. 25. Section 45a-648 of the general statutes is repealed and the
600 following is substituted in lieu thereof (*Effective October 1, 2010*):

601 (a) An application for involuntary representation may be filed by

602 any person alleging that a respondent is incapable of managing his or
603 her affairs or incapable of caring for himself or herself and stating the
604 reasons for the alleged incapability. The application shall be filed in the
605 court of probate in the district in which the respondent resides, is
606 domiciled or is located at the time of the filing of the application.

607 (b) An application for involuntary representation for a
608 nondomiciliary of the state [made pursuant to subsection (a) of this
609 section shall not be granted unless the court finds the (1) respondent is
610 presently located in the probate district in which the application is
611 filed; (2) applicant has made reasonable efforts to provide notice to
612 individuals and applicable agencies listed in subsection (a) of section
613 45a-649 concerning the respondent; (3) respondent has been provided
614 an opportunity to return to the respondent's place of domicile, and has
615 been provided the financial means to return to the respondent's place
616 of domicile within the respondent's resources, and has declined to
617 return, or the applicant has made reasonable but unsuccessful efforts
618 to return the respondent to such respondent's place of domicile; and
619 (4) requirements of this chapter for the appointment of a conservator
620 pursuant to an application for involuntary representation have been
621 met] shall be made pursuant to the provisions of sections 8 to 16,
622 inclusive, of this act.

623 [(c) If, after the appointment of a conservator for a nondomiciliary of
624 the state the nondomiciliary becomes domiciled in this state, the
625 provisions of this section regarding involuntary representation of a
626 nondomiciliary shall no longer apply.

627 (d) The court shall review any involuntary representation of a
628 nondomiciliary ordered by the court pursuant to subsection (b) of this
629 section every sixty days. Such involuntary representation shall expire
630 sixty days after the date such involuntary representation was ordered
631 by the court or sixty days after the most recent review ordered by the
632 court, whichever is later, unless the court finds the (1) conserved
633 person is presently located in the state; (2) conservator has made
634 reasonable efforts to provide notice to individuals and applicable

agencies listed in subsection (a) of section 45a-649 concerning the conserved person; (3) conserved person has been provided an opportunity to return to the conserved person's place of domicile and has been provided the financial means to return to the conserved person's place of domicile within the conserved person's resources, and has declined to return, or the conservator has made reasonable but unsuccessful efforts to return the conserved person to the conserved person's place of domicile; and (4) requirements of this chapter for the appointment of a conservator pursuant to an application for involuntary representation have been met. As part of its review under this subsection, the court shall receive and consider reports from the conservator and from the attorney for the conserved person regarding the requirements of this subsection.**]**

[(e)**]** (c) A person is guilty of fraudulent or malicious application or false testimony when such person (1) wilfully files a fraudulent or malicious application for involuntary representation or appointment of a temporary conservator, (2) conspires with another person to file or cause to be filed such an application, or (3) wilfully testifies either in court or by report to the court falsely to the incapacity of any person in any proceeding provided for in sections 45a-644 to 45a-663, inclusive, as amended by this act. Fraudulent or malicious application or false testimony is a class D felony.

Sec. 26. Section 45a-649 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) (1) Upon an application for involuntary representation, the court shall issue a citation to the following enumerated parties to appear before it at a time and place named in the citation, which shall be served on the parties at least ten days before the hearing date, or in the case of an application made pursuant to section 17a-543 or 17a-543a, at least seven days before the hearing date, which date in any event shall not be more than thirty days after the receipt of the application by the Court of Probate unless continued for cause shown. Notice of the hearing shall be sent within thirty days after receipt of the application.

668 In addition to such notice, (A) notice for a matter brought under
669 sections 8 to 16, inclusive, of this act shall be given in the manner
670 provided in section 15 of this act, and (B) notice for a matter brought
671 under section 17 of this act shall be given in the manner provided in
672 section 18 of this act.

673 (2) The court shall direct that personal service of the citation be
674 made, by a state marshal, constable or an indifferent person, upon the
675 following: The respondent and the respondent's spouse, if any, if the
676 spouse is not the applicant, except that in cases where the application
677 is for involuntary representation pursuant to section 17b-456, and there
678 is no spouse, the court shall order notice by certified mail to the
679 children of the respondent and if none, the parents of the respondent
680 and if none, the brothers and sisters of the respondent or their
681 representatives, and if none, the next of kin of such respondent.

682 (3) The court shall order such notice as it directs to the following:
683 (A) The applicant; (B) the person in charge of welfare in the town
684 where the respondent is domiciled or resident and, if there is no such
685 person, the first selectman or chief executive officer of the town if the
686 respondent is receiving assistance from the town; (C) the
687 Commissioner of Social Services, if the respondent is in a state-
688 operated institution or receiving aid, care or assistance from the state;
689 (D) the Commissioner of Veterans' Affairs if the respondent is
690 receiving veterans' benefits or the Veterans' Home, or both, if the
691 respondent is receiving aid or care from such home, or both; (E) the
692 Commissioner of Administrative Services, if the respondent is
693 receiving aid or care from the state; (F) the children of the respondent
694 and if none, the parents of the respondent and if none, the brothers
695 and sisters of the respondent or their representatives; (G) the person in
696 charge of the hospital, nursing home or some other institution, if the
697 respondent is in a hospital, nursing home or some other institution.

698 (4) The court, in its discretion, may order such notice as it directs to
699 other persons having an interest in the respondent and to such persons
700 the respondent requests be notified.

(5) If personal service of the notice required in subsection (b) of this section is not made as required in subdivision (2) of this subsection, the court shall be deprived of jurisdiction over the application.

(b) The notice required by subdivision (2) of subsection (a) of this section shall specify **[**(A)**]** (1) the nature of involuntary representation sought and the legal consequences thereof, **[**(B)**]** (2) the facts alleged in the application, **[**(C)**]** (3) the date, time and place of the hearing, and **[**(D)**]** (4) that the respondent has a right to be present at the hearing and has a right to be represented by an attorney of the respondent's choice at the respondent's own expense. The notice shall also include a statement in boldface type of a minimum size of twelve points in substantially the following form:

"POSSIBLE CONSEQUENCES OF THE APPOINTMENT

OF A CONSERVATOR FOR YOU

This court has received an application to appoint a conservator for you. A conservator is a court-appointed legal guardian who may be assigned important decision-making authority over your affairs. If the application is granted and a conservator is appointed for you, you will lose some of your rights.

A permanent conservator may only be appointed for you after a court hearing. You have the right to attend the hearing on the application for appointment of a permanent conservator. If you are not able to access the court where the hearing will be held, you may request that the hearing be moved to a convenient location, even to your place of residence.

You should have an attorney represent you at the hearing on the application. If you are unable to obtain an attorney to represent you at the hearing, the court will appoint an attorney for you. If you are unable to pay for representation by an attorney, the court will pay attorney fees as permitted by the court's rules. Even if you qualify for payment of an attorney on your behalf, you may choose an attorney if

732 the attorney will accept the attorney fees permitted by the court's rules.

733 If, after a hearing on the application, the court decides that you lack
734 the ability to care for yourself, pay your bills or otherwise manage
735 your affairs, the court may review any alternative plans you have to
736 get assistance to handle your own affairs that do not require
737 appointment of a conservator. If the court decides that there are no
738 adequate alternatives to the appointment of a conservator, the court
739 may appoint a conservator and assign the conservator responsibility
740 for some or all of the duties listed below. While the purpose of a
741 conservator is to help you, you should be aware that the appointment
742 of a conservator limits your rights. Among the areas that may be
743 affected are:

744 - Accessing and budgeting your money

745 - Deciding where you live

746 - Making medical decisions for you

747 - Paying your bills

748 - Managing your real and personal property

749 You may participate in the selection of your conservator. If you
750 have already designated a conservator or if you inform the court of
751 your choice for a conservator, the court must honor your request
752 unless the court decides that the person designated by you is not
753 appropriate.

754 The conservator appointed for you may be a lawyer, a public official
755 or someone whom you did not know before the appointment. The
756 conservator will be required to make regular reports to the court about
757 you. The conservator may charge you a fee, under the supervision of
758 the court, for being your conservator."

759 (c) Notice to all other persons required by this section shall only be
760 required to state that involuntary representation is sought, the nature

761 of the involuntary representation sought, the legal consequences of the
762 involuntary representation and the date, time and place of the hearing
763 on the application for involuntary representation.

764 (d) If the respondent is unable to request or obtain an attorney for
765 any reason, the court shall appoint an attorney to represent the
766 respondent in any proceeding under this title involving the
767 respondent. If the respondent is unable to pay for the services of such
768 attorney, the reasonable compensation for such attorney shall be
769 established by, and paid from funds appropriated to, the Judicial
770 Department, except that if funds have not been included in the budget
771 of the Judicial Department for such purposes, such compensation shall
772 be established by the Probate Court Administrator and paid from the
773 Probate Court Administration Fund.

774 (e) If the respondent notifies the court in any manner that the
775 respondent wants to attend the hearing on the application but is
776 unable to do so, the court shall schedule the hearing on the application
777 at a place that would facilitate attendance by the respondent.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*October 1, 2010*	New section
Sec. 2	*October 1, 2010*	New section
Sec. 3	*October 1, 2010*	New section
Sec. 4	*October 1, 2010*	New section
Sec. 5	*October 1, 2010*	New section
Sec. 6	*October 1, 2010*	New section
Sec. 7	*October 1, 2010*	New section
Sec. 8	*October 1, 2010*	New section
Sec. 9	*October 1, 2010*	New section
Sec. 10	*October 1, 2010*	New section
Sec. 11	*October 1, 2010*	New section
Sec. 12	*October 1, 2010*	New section
Sec. 13	*October 1, 2010*	New section
Sec. 14	*October 1, 2010*	New section
Sec. 15	*October 1, 2010*	New section
Sec. 16	*October 1, 2010*	New section

Sec. 17	*October 1, 2010*	New section
Sec. 18	*October 1, 2010*	New section
Sec. 19	*October 1, 2010*	New section
Sec. 20	*October 1, 2010*	New section
Sec. 21	*October 1, 2010*	New section
Sec. 22	*October 1, 2010*	New section
Sec. 23	*October 1, 2010*	New section
Sec. 24	*October 1, 2010*	45a-644
Sec. 25	*October 1, 2010*	45a-648
Sec. 26	*October 1, 2010*	45a-649

Statement of Legislative Commissioners:
Section 16 was rewritten for accuracy.

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The Office of the Probate Court Administrator will incur no fiscal impact to establish and maintain a registry of guardianships and protective orders registered in other states.

Other changes in the bill, which address various jurisdictional issues related to inter-state conservatorship proceedings, are not anticipated to result in a fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis
sSB 426

AN ACT CONCERNING THE CONNECTICUT UNIFORM ADULT PROTECTIVE PROCEEDINGS JURISDICTION ACT.

SUMMARY:

This bill enacts the Connecticut Uniform Adult Protective Proceedings Jurisdiction Act which generally applies to (1) guardians, which it defines as a conservator of a person or someone appointed by an out-of-state court to make decisions for an adult and (2) conservators, which it defines as a conservator of an estate or someone appointed by an out-of-state court to administer an adult's property.

The bill replaces current law on appointing a conservator for someone not domiciled in Connecticut with new provisions on the probate court's jurisdiction and the interaction of probate courts with courts in other states. It also (1) authorizes special jurisdiction, which allows the court to take limited actions, such as appointing a temporary conservator, when the court does not otherwise have jurisdiction and (2) establishes factors the probate court must consider when deciding whether to decline jurisdiction because another state is a more appropriate forum.

It allows a probate court to (1) communicate with a court in another state about proceedings covered by the bill, (2) request that the out-of-state court take certain actions, and (3) communicate with and respond to similar requests from an out-of-state court.

It establishes a procedure to transfer a guardianship or conservatorship to another state and for the probate court to accept a transfer from an out-of-state court.

It (1) allows guardians and conservators appointed in another state

to register with the Office of the Probate Court Administrator, (2) requires the office to create a public registry of the guardianships and protective orders, and (3) allows the guardian or conservator to exercise his or her powers in Connecticut except as prohibited by Connecticut law.

The bill's provisions apply to "states," defined as one of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States. But it also allows a probate court to apply the bill's provisions to foreign countries as if they were states (except for the provisions on the registry and exercising powers after registration).

The bill applies to guardianship and protective proceedings begun on or after October 1, 2010. Its provisions on communicating with out-of-state courts, interstate transfers, and registering out-of-state appointments apply to proceedings begun before October 1, 2010, regardless of whether a guardianship or protective order has been issued, but the bill's jurisdictional provisions do not.

EFFECTIVE DATE: October 1, 2010

§ 2 — DEFINITIONS

The bill applies to "conservators," which it defines as a (1) conservator of the estate or (2) person, other than a hospital or nursing home facility, appointed by a court outside of Connecticut to administer the property of an adult. A "protected person" is someone subject to involuntary representation by a conservator under Connecticut law or an adult for whom an out-of-state court has issued a protective order. A "protective order" is an order appointing a conservator of the estate under Connecticut law or an order by an out-of-state court appointing a conservator or an other order related to managing an adult's property. A "protective proceeding" is a judicial proceeding under Connecticut law on conservators or an out-of-state judicial proceeding where a protective order is sought or has been

issued.

The bill also applies to "guardians," which it defines as a (1) conservator of the person or (2) person, other than a hospital or nursing home facility, appointed by a court outside of Connecticut to make decisions for the person of an adult (someone over age 18). It does not include guardians of a minor or plenary or limited guardians of a person with mental retardation. A "guardianship order" is an order appointing a guardian under Connecticut law on conservators or an order by an out-of-state court appointing a guardian. A "guardianship proceeding" is a judicial proceeding held (1) under Connecticut law on conservators where an order to appoint a guardian's is sought or has been issued or (2) by an out-of-state court where an order to appoint a guardian is sought or has been issued.

An "incapacitated person" is someone subject to involuntary representation by a conservator under Connecticut law or an adult whom an out-of-state court has appointed a guardian.

A conservator or guardian can be a "person," which is defined as an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or government subdivision, agency or instrumentality, or any other legal or commercial entity.

The bill defines a "record" as information inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form.

§§ 5-7 — COMMUNICATION AND REQUESTS INVOLVING COURTS OF OTHER STATES

§ 5 — Communication

The bill allows a probate court to communicate with a court in another state about a proceeding arising under the bill or the law on conservators. The court must allow the parties to participate in the communication.

The court must make a record of the communication, inform parties about the communication within seven business days, give parties access to the record, and give parties an opportunity to present facts and legal arguments before issuing a decision on jurisdiction. Courts may communicate about schedules, calendars, court records, or other administrative matters without making a record.

§ 6 — Requests To or From a Court of Another State

To the extent allowed or required by law, the bill allows a probate court in a proceeding for involuntary representation to request that the appropriate court of another state:

1. hold an evidentiary hearing;

2. order a person in that state to produce evidence or give testimony under that state's procedures;

3. order an evaluation or assessment of the respondent, subject to Connecticut law on examining an allegedly incompetent person;

4. order an appropriate investigation of someone involved in a proceeding;

5. forward to the probate court (a) a certified copy of the transcript or hearing record of the evidentiary hearing the court requested under these provisions or any other proceeding, (b) any evidence produced under the court's request under these provisions, and (c) any evaluation or assessment prepared in compliance with the court's request under these provisions;

6. issue an order to assure a person's appearance in the proceeding when that is necessary for the court to make a determination, including a person who is the subject of the proceeding or who has had a guardian or conservator appointed for him or her (this provision is subject to existing law on (a) holding a hearing at a place to facilitate the respondent's attendance and (b) a conserved person waiving a hearing on placement in a long-term

care institution or change of residence); or

7. issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined by federal law, subject to an attorney's right to information related to an involuntary proceeding.

Subject to existing law, the bill gives a probate court jurisdiction if it receives this type of request from a court of another state, for the limited purpose of granting the request or making reasonable efforts to comply with it.

§ 7 — Evidence and Testimony By Out-of-State Witnesses

In proceedings for involuntary representation in Connecticut, the bill allows a witness located in another state to offer testimony by (1) deposition or (2) other means allowable in this state for testimony taken in another state.

A probate court, on its own motion, can order that a witness' testimony be taken in another state and set the manner and terms under which it will be taken.

The court can permit a witness in another state to be deposed or testify by telephone, audiovisual, or other electronic means. A probate court must cooperate with the other state's court in designating an appropriate location for the deposition or testimony.

Documentary evidence transmitted from another state to a probate court by technological means that do not produce an original writing cannot be excluded from evidence on an objection based on the best evidence rule (a rule that generally requires the use of an original document in court proceedings).

§§ 8-16, 25 — PROBATE COURT JURISDICTION

Current Law on Appointing Conservators for a Non-Domiciliary

The bill replaces current law on appointing a conservator for

someone not domiciled in Connecticut with new provisions on the jurisdiction of probate courts and their interaction with courts in other states.

Under current law, an application for involuntary representation for someone incapable of managing his or her affairs or caring for himself or herself cannot be granted for someone not domiciled in Connecticut unless:

1. the person is presently located in the district where the application is filed;

2. the applicant made reasonable efforts to provide notice to individuals and applicable agencies about the person;

3. (a) the person was given an opportunity and financial means, within the person's resources, to return to his or her place of domicile and declined to return or (b) the applicant made reasonable but unsuccessful efforts to return the person to his or her place of domicile; and

4. the other legal requirements for appointing a conservator are met.

If the court appoints a conservator and the person later becomes domiciled in Connecticut, these provisions no longer apply.

Current law requires the court to review the involuntary representation every 60 days, and the representation expires the later of 60 days after it was ordered or after the most recent review, unless the court makes the same findings as required for the initial appointment. In its review, the court must consider reports from the conservator and attorney for the person.

§§ 9-10 —Jurisdiction

The bill provides that proceedings for involuntary representation in Connecticut are subject to existing law on conservators but jurisdiction is determined under the following provisions. A Connecticut probate

court has jurisdiction to appoint a conservator of the person or estate under Connecticut law if:

1. Connecticut is the person's home state (the state where the person was physically present, including any period of temporary absence, for at least six consecutive months immediately before the petition was filed or, if there is none, the state where the person was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months before the petition was filed);

2. Connecticut is a significant-connection state and certain conditions are met (see below);

3. Connecticut probate court does not otherwise have jurisdiction, the person's home state and all significant-connection states decline jurisdiction because Connecticut is the more appropriate forum, and jurisdiction in Connecticut is consistent with Connecticut's statutes and constitution and the federal constitution; or

4. special jurisdiction exists (see below).

§§ 8-10 — Significant-Connection State Jurisdiction

Under the bill, a "significant-connection state" is a state where the person has a significant connection, other than mere physical presence, and in which substantial evidence on the person is available. To decide whether a person has a significant connection with a state, the bill requires the court to consider the:

1. location of the person's family and others who must be notified of the proceeding;

2. length of time the person at any time was physically present in the state and the duration of any absence;

3. location of the person's property; and

4. extent of the person's ties to the state such as voter registration, state or local tax return filing, vehicle registration, driver's license, social relationships, and receipt of services.

For jurisdiction based on Connecticut being a significant-connection state, one of the following must apply:

1. the person does not have a home state;

2. a court of the home state declines jurisdiction because Connecticut is a more appropriate forum; or

3. the person 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 (a) a petition is not filed in the home state, (b) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding, and (c) the probate court concludes that it is an appropriate forum under the bill.

§ 11 — Special Jurisdiction

Under the bill, a probate court that does not otherwise have jurisdiction but makes the findings necessary to appoint a temporary conservator, has special jurisdiction to do the following:

1. appoint a temporary conservator of the person or estate in an emergency under existing law for up to 90 days for someone who is physically in Connecticut (existing law for temporary conservators only allows an appointment for up to 60 days) or

2. appoint a temporary conservator of the person or estate for someone for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to those in the bill (see below).

If Connecticut is not the person's home state when an emergency petition is filed, the bill requires the court to dismiss the petition when

the respondent or the court of the home state requests it, regardless of whether it is before or after an emergency appointment.

The bill defines an "emergency" as a circumstance that will result in immediate and irreparable harm to the person's mental or physical health or financial or legal affairs. This includes the circumstances under existing law for appointment and service of a temporary conservator.

§ 12 — Continuing Jurisdiction

The bill gives a court that appointed a guardian or issued a protective order consistent with the bill and existing law on conservators, exclusive and continuing jurisdiction over the proceeding until the court terminates it or the appointment or order expires by its terms. This does not apply when the court exercises special jurisdiction.

§ 13 — Declining Jurisdiction

Under the bill, a probate court that has jurisdiction under the bill to appoint a conservator of the person or estate can decline to exercise jurisdiction if it determines at any time that a court of another state is a more appropriate forum. If the court declines jurisdiction, it must dismiss the proceeding or stay it for 90 days to allow a petition to be filed in a more appropriate forum with jurisdiction to appoint a guardian or issue a protective order.

To determine whether the probate court is the appropriate forum, the bill requires the court to consider all relevant factors, including:

1. any expressed preference by the person;

2. whether abuse, neglect, or exploitation of the person has occurred or is likely to occur and which state could best protect the person;

3. the length of time the person was physically present in or a legal resident of Connecticut or another state;

4. the person's distance from the court in each state;

5. the financial circumstances of the person's estate;

6. the nature and location of the evidence;

7. the ability of the court in each state to decide the issue with due process and without undue delay;

8. the procedures necessary to present evidence;

9. the familiarity of the court of each state with the facts and issues in the proceeding; and

10. the court's ability to monitor the conservator's conduct, if one is appointed, in and outside of Connecticut as applicable.

The bill requires the court to make specific written findings on its basis for determining the appropriate forum.

§ 14 — Obtaining Jurisdiction by Unjustifiable Conduct

If a probate court determines at any time that it acquired jurisdiction to appoint a guardian or issue a protective order because of a party's unjustifiable conduct, the court can:

1. decline to exercise jurisdiction and dismiss the case if it has not entered an order and

2. rescind any order and dismiss the case, but the court can exercise limited jurisdiction for up to 90 days before dismissal to fashion an appropriate remedy to avoid immediate and irreparable harm to the person's mental or physical health or financial or legal affairs to prevent a repetition of the unjustifiable conduct.

If a party seeking or having sought to invoke the court's jurisdiction engaged in unjustifiable conduct, the bill allows the court to assess that party for necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees

and expenses, and travel expenses. It cannot assess fees, costs, or expenses of any kind against this state or a government entity unless authorized by other law.

The bill defines a "party" as the person who is the subject of a petition, the person who filed a petition, a guardian, a conservator, or any other person allowed by a court to participate in a proceeding.

§ 15 — Notice

If a petition for involuntary representation is brought in Connecticut and this is not the person's home state on the date the petition was filed, in addition to complying with the notice requirements for appointment of a conservator under existing law, notice must be given to those who would be entitled to notice if the proceeding was brought in the home state. The notice must be given in the same manner as required by Connecticut law for appointment of a conservator.

§ 16 — Petitions in Multiple States

The bill sets the following rules if a petition for involuntary representation is filed in Connecticut and a petition for appointment of a guardian or issuance of a protective order is filed in another state and neither petition is dismissed or withdrawn:

1. if the probate court has jurisdiction under the bill, it can proceed unless a court in another state acquires jurisdiction under similar provisions before the appointment or issuance of the order and

2. if the probate court does not have jurisdiction under the bill who the petition is filed or any time before the appointment or issuance of the order, it must stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the probate court must dismiss the petition unless the court in the other state determines that the probate court is a more appropriate forum and jurisdiction in Connecticut is consistent with this state's statutes and constitution and the federal constitution.

These rules do not apply when a court exercises special jurisdiction over a petition for appointment of a temporary conservator in an emergency.

INTERSTATE TRANSFERS

§ 17 — Transfer to Another State

Except for an individual under voluntary representation, the bill allows (1) a conserved person or his or her attorney, (2) a conservator of the person or estate appointed in this state, or (3) anyone receiving notice of an involuntary representation proceeding to petition a probate court to transfer the conservatorship of the person, estate, or both to another state. The bill requires notice to anyone who would be entitled to notice of a petition in this state for the appointment of a conservator.

The court must hold a hearing on its own motion or on request of (1) the conservator of the person or estate, (2) the conserved person or his or her attorney, or (3) someone who received notice.

Provisional Orders. The court must issue an order provisionally granting a petition to transfer a conservatorship of the person and direct the conservator to petition for guardianship in the other state if:

1. it is satisfied that the guardianship will be accepted by the court in the other state;

2. the conserved person is physically present in or is reasonably expected to move permanently to the other state;

3. no objection to the transfer is made or anyone who objects fails to establish that the transfer would be contrary to the conserved person's interests, including the person's reasoned and informed expressed preferences;

4. plans for the conserved person's care and services in the other state (a) are reasonable and sufficient; (b) have been made after allowing the conserved person the opportunity to participate

meaningfully in decision-making according to the person's abilities; (c) assist the person in removing obstacles to independence and achieving self-reliance; (d) ascertain the person's views; (e) make decisions conforming to the person's reasonable and informed expressed preferences, and (f) make all reasonable efforts to make decisions that conform with the person's expressed health care preferences including any health care instructions and wishes described in valid health care instructions; and

5. the requirements of Connecticut law are met regarding (a) ending the person's tenancy or lease, (b) disposing of his or her real property or household furnishings, (c) changing his or her residence, or (d) placing him or her in a long-term care institution.

The court must issue a provisional order granting a petition to transfer a conservatorship of the estate and direct the conservator to petition for conservatorship of the estate in the other state if:

1. it is satisfied that the conservatorship will be accepted by the court of the other state;

2. the conserved person is physically present in, is reasonably expected to move permanently to, or has a significant connection to the other state under the bill;

3. no objection to the transfer is made or anyone who objects fails to establish that the transfer would be contrary to the conserved person's interests, including the person's reasoned and informed expressed preferences;

4. adequate arrangements will be made for management of the conserved person's property according to Connecticut law on a conservator's duties and distributions from the estate; and

5. the transfer is made according to Connecticut law regarding (a) ending the person's tenancy or lease, (b) disposing of his or her

real property or household furnishings, (c) changing his or her residence, or (d) placing him or her in a long-term care institution.

Final Order. The bill requires the court to issue a final order confirming the transfer and terminating the guardianship or conservatorship when it receives:

1. a provisional order from the court accepting the proceeding issued under provisions similar to the bill's and

2. documents required to terminate a guardianship or conservatorship in Connecticut.

§ 18 — Transfer to Connecticut

The bill requires a guardian or conservator seeking to confirm a transfer of a guardianship or conservatorship to Connecticut under provisions similar to those in bill, to petition the probate court to accept the guardian as a conservator of the person or estate. The petition must include a certified copy of the other state's provisional order of transfer.

The bill requires notice to anyone who would be entitled to notice of a petition in Connecticut and the other state. The notice must be given in the same manner as required by Connecticut law for applications for involuntary representation by a conservator.

The court must hold a hearing on its own motion or on request of (1) the guardian, (2) the conservator, (3) the person who is the subject of the petition, or (4) someone who received notice.

The court must issue an order provisionally granting a petition unless:

1. an objection is made and the person objecting establishes that the transfer would be contrary to the person's interests, including the person's reasoned and informed expressed preferences or

2. the guardian or conservator is ineligible for appointment as a conservator of the person or estate in Connecticut.

The court must issue a final order accepting the proceeding and appointing the guardian or conservator as a conservator of the person or estate when it receives a final order from the other court issued under provisions similar to those in the bill.

At least 30 days before issuing a final order accepting a transfer to Connecticut, the probate court must insure that the incapacitated or protected person (1) is represented by counsel as provided in Connecticut law and (2) receives notice of his or her rights under Connecticut law regarding the transfer.

Within 90 days of issuing a final order accepting the transfer, the bill requires the court to determine whether the conservatorship needs to be modified to conform to Connecticut law and order necessary modifications.

In granting a petition, the court must recognize a guardianship or conservatorship order from the other state, including the determination of the person's incapacity and the appointment of the guardian or conservator, to the extent it conforms to Connecticut law.

A probate court's denial of a petition does not affect the ability of the guardian or conservator to apply for involuntary representation if the court has jurisdiction to grant the involuntary representation for reasons other than the provisional order of transfer.

When a probate court grants a petition to accept a guardianship or conservatorship from another state:

1. the incapacitated or protected person has the same rights as if the conservator of the person or estate was originally appointed under Connecticut law, including the right to review and terminate the conservator's appointment and

2. the guardian or conservator has the same responsibilities and

duties as are imposed on a conservator of the person or estate by Connecticut law.

§§ 19-21 — REGISTRY OF OUT-OF-STATE APPOINTMENTS

The bill allows a guardian or conservator appointed in another state to register the (1) guardianship as a conservatorship of the person or (2) conservatorship as a conservator of the estate, in Connecticut by filing as a foreign judgment in the Office of the Probate Court Administrator certified copies of the order and letters of office. To register, no appointment or protective order petitions may be pending in Connecticut and the guardian must give notice to the appointing court. Conservators must also submit any bond and may submit certified copies for recording on the land records in a town where a protected person has real property. The bill requires the Office of the Probate Court Administrator to maintain a public registry of this information.

On registration, the bill allows a guardian or conservator from another state to exercise in Connecticut all powers authorized in the order of appointment, except as prohibited by Connecticut law. The bill specifies that these powers include 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 on nonresident parties. The registration lapses 120 days after registration, but it can be extended for 120 days for good cause by a probate court with jurisdiction over the place where the subject of the guardianship is physically located.

The bill allows a probate court or, to the extent it lacks jurisdiction, the Superior Court to grant any relief available under the bill, other law on conservators, or other state law to enforce a registered order.

§ 22 — UNIFORMITY WITH OTHER STATES

The bill requires that when applying and construing the bill, consideration be given to the need to promote uniformity of the law with respect to its subject matter among states that enact these uniform

provisions, consistent with the need to protect individual civil rights and due process.

§ 23 — FEDERAL LAW

The bill specifies that it modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act. But the bill also specifies that it does not modify, limit, or supersede consumer protections specified in federal law, nor does it authorize electronic delivery of certain notices specified in 15 U.S.C. § 7003(b) (see BACKGROUND).

BACKGROUND

Electronic Signatures in Global and National Commerce Act

On June 30, 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically (15 U.S.C. § 7001 *et seq*.).

This law (15 USC § 7002) allows a state statute to modify, limit, or supersede it only if the state law:

1. constitutes an enactment or adoption of the Uniform Electronic Transactions Act or

2. specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability if they satisfy certain standards and the state law makes specific reference to this act.

Consumer Protections in 15 USC § 7001(c)

If a statute, regulation, or other rule requires that information relating to any transaction in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that the

information be in writing if the following conditions, among others, are satisfied:

1. the consumer has affirmatively consented to such use and has not withdrawn such consent;

2. the consumer, before consenting, is provided with a clear and conspicuous statement that satisfies certain requirements and is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

3. the consumer consents or confirms consent electronically, in a way that reasonably demonstrates that he or she can access information in the electronic form that will be used to provide the information that is the subject of the consent.

Certain Notices Specified in 15 USC § 7003(b)

This federal law specifies the following types of notices:

1. court notices, required to be executed in connection with court proceedings;

2. notices about the cancellation or termination of utility services;

3. default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or rental agreement for, an individual's primary residence;

4. the cancellation or termination of health or life insurance benefits; or

5. the recall or material failure of a product that risks health or safety.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea	41	Nay	0	(03/26/2010)