



# Senate

General Assembly

**File No. 253**

January Session, 2011

Substitute Senate Bill No. 1053

*Senate, March 29, 2011*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd 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:

1 Section 1. (NEW) (*Effective October 1, 2011*) Sections 1 to 23,  
2 inclusive, of this act may be cited as the "Connecticut Uniform Adult  
3 Protective Proceedings Jurisdiction Act".

4 Sec. 2. (NEW) (*Effective October 1, 2011*) As used in sections 1 to 23,  
5 inclusive, of this act:

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

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

13 (3) "Conservator of the person" means (A) a conservator of the  
14 person, as defined in section 45a-644 of the general statutes, as  
15 amended by this act, or (B) a person, except a hospital or nursing home  
16 facility, appointed by a court outside of this state to make decisions  
17 regarding the person of an adult.

18 (4) "Conservator of the person order" means (A) an order appointing  
19 a conservator of the person pursuant to part IV of chapter 802h of the  
20 general statutes, or (B) an order by a court outside of this state  
21 appointing a conservator of the person.

22 (5) "Conservator of the person proceeding" means (A) a judicial  
23 proceeding held pursuant to part IV of chapter 802h of the general  
24 statutes in which an order for the appointment of a conservator of the  
25 person is sought or has been issued, or (B) a judicial proceeding held  
26 outside of this state in which an order for the appointment of a  
27 conservator of the person is sought or has been issued.

28 (6) "Involuntary representation" means involuntary representation,  
29 as defined in section 45a-644 of the general statutes, as amended by  
30 this act.

31 (7) "Party" means the respondent, petitioner, conservator of the  
32 person or conservator of the estate or any other person allowed by a  
33 court to participate in a conservator of the person proceeding or a  
34 conservator of the estate proceeding.

35 (8) "Person", except as used in the term "conserved person", means  
36 an individual, corporation, business trust, estate, trust, partnership,  
37 limited liability company, association, joint venture, public  
38 corporation, government or governmental subdivision, agency or  
39 instrumentality, or any other legal or commercial entity.

40 (9) "Conserved person" means a conserved person, as defined in  
41 section 45a-644 of the general statutes, as amended by this act, or an  
42 adult for whom a conservator of the person or conservator of the estate  
43 has been appointed in a judicial proceeding outside of this state.

44 (10) "Conservator of the estate order" means (A) an order appointing  
45 a conservator of the estate pursuant to part IV of chapter 802h of the  
46 general statutes, (B) an order by a court outside of this state appointing  
47 a conservator of the estate, or (C) any other order by a court related to  
48 the management of the property of an adult.

49 (11) "Conservator of the estate proceeding" means (A) a judicial  
50 proceeding held pursuant to part IV of chapter 802h of the general  
51 statutes, or (B) a judicial proceeding held outside of this state in which  
52 a conservator of the estate order is sought or has been issued.

53 (12) "Record" means information that is inscribed on a tangible  
54 medium or that is stored in an electronic or other medium and is  
55 retrievable in perceivable form.

56 (13) "Respondent" means a respondent, as defined in section 45a-644  
57 of the general statutes, as amended by this act, or an adult for whom  
58 the appointment of a conservator of the person or a conservator of the  
59 estate order is sought outside of this state.

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

64 Sec. 3. (NEW) (*Effective October 1, 2011*) (a) Sections 1 to 23, inclusive,  
65 of this act and sections 45a-644 of the general statutes, as amended by  
66 this act, 45a-648 of the general statutes, as amended by this act, and  
67 45a-649 of the general statutes, as amended by this act, apply to  
68 conservator of the person proceedings and conservator of the estate  
69 proceedings begun on or after October 1, 2011.

70 (b) Sections 1 to 7, inclusive, of this act and sections 17 to 23,  
71 inclusive, of this act apply to conservator of the person proceedings  
72 and conservator of the estate proceedings begun before October 1,  
73 2011, regardless of whether a conservator of the person order or  
74 conservator of the estate order has been issued.

75       Sec. 4. (NEW) (*Effective October 1, 2011*) A court of probate may treat  
76 a foreign country as if it were a state for the purpose of applying  
77 sections 1 to 18, inclusive, of this act and sections 22 and 23 of this act.

78       Sec. 5. (NEW) (*Effective October 1, 2011*) (a) A court of probate may  
79 communicate with a court in another state concerning a proceeding  
80 arising under sections 1 to 23, inclusive, of this act or part IV of chapter  
81 802h of the general statutes. The court of probate shall allow the  
82 parties to participate in the communication.

83       (b) The court of probate shall make an audio recording of the  
84 communication.

85       (c) The court of probate shall grant the parties access to the audio  
86 recording of the communication.

87       (d) Notwithstanding the provisions of subsections (a) and (b) of this  
88 section, courts of probate may communicate concerning schedules,  
89 calendars, court records and other administrative matters without  
90 making a record or allowing the parties to participate in the  
91 communication.

92       Sec. 6. (NEW) (*Effective October 1, 2011*) (a) In a proceeding for  
93 involuntary representation in this state, a court of probate may request,  
94 to the extent permitted or required by the laws of this state, the  
95 appropriate court of another state to do any of the following:

96       (1) Hold an evidentiary hearing;

97       (2) Order a person in that state to produce evidence or give  
98 testimony pursuant to the procedures of that state;

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

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

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

110 (6) Issue an order necessary to assure the appearance in the  
111 proceeding of a person whose presence is necessary for the court to  
112 make a determination, including the respondent or conserved person,  
113 subject to the provisions of subsection (e) of section 45a-649 of the  
114 general statutes, as amended by this act, subsection (e) of section 45a-  
115 650 of the general statutes or subsection (g) of section 45a-656b of the  
116 general statutes; or

117 (7) Issue an order authorizing the release of medical, financial,  
118 criminal or other relevant information in that state, including protected  
119 health information as defined in 45 CFR 160.103, as amended from  
120 time to time, subject to the provisions of subsection (g) of section 45a-  
121 649a of the general statutes.

122 (b) If a court of another state in which a conservator of the person  
123 proceeding or conservator of the estate proceeding is pending requests  
124 assistance of the kind provided in subsection (a) of this section, a court  
125 of probate has jurisdiction for the limited purpose of granting the  
126 request or making reasonable efforts to comply with the request,  
127 subject to the laws of this state.

128 Sec. 7. (NEW) (*Effective October 1, 2011*) (a) In a proceeding for  
129 involuntary representation in this state, in addition to other  
130 procedures that may be available, testimony of a witness who is  
131 located in another state may be offered by deposition or other means  
132 allowable in this state for testimony taken in another state. A court of  
133 probate on its own motion may order that the testimony of a witness  
134 be taken in another state and may prescribe the manner in which and  
135 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, 2011*) (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 of the person or temporary conservator of the  
152 estate may be appointed and may serve under subsection (a) of section  
153 45a-654 of the general statutes;

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

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

166 (b) In determining under section 10 of this act and subsection (e) of

167 section 17 of this act whether a respondent has a significant connection  
168 with a particular state, the court shall consider:

169 (1) The location of the respondent's family and other persons  
170 required to be notified of the conservator of the person proceeding or  
171 conservator of the estate proceeding;

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

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

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

178 Sec. 9. (NEW) (*Effective October 1, 2011*) A proceeding for  
179 involuntary representation in this state shall be subject to the  
180 provisions of part IV of chapter 802h of the general statutes, except that  
181 (1) jurisdiction shall be determined in accordance with sections 8 to 16,  
182 inclusive, of this act, and (2) the court of probate shall grant the parties  
183 the opportunity to present facts and legal arguments before issuing a  
184 decision on jurisdiction.

185 Sec. 10. (NEW) (*Effective October 1, 2011*) A court of probate in this  
186 state has jurisdiction to appoint a conservator of the person or  
187 conservator of the estate for a respondent pursuant to part IV of  
188 chapter 802h of the general statutes if:

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

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

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

195 (B) The respondent has a home state, a petition for appointment of a

196 conservator of the person or issuance of a conservator of the estate  
197 order is not pending in a court of that state or another significant-  
198 connection state, and, before the court makes the appointment or  
199 issues the order:

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

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

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

206 (3) A court of probate in this state does not have jurisdiction under  
207 subdivision (1) or (2) of this subsection, the respondent's home state  
208 and all significant-connection states have declined to exercise  
209 jurisdiction because this state is the more appropriate forum, and  
210 jurisdiction in this state is consistent with the statutes of this state and  
211 the Constitution of this state and the Constitution of the United States;  
212 or

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

215 Sec. 11. (NEW) (*Effective October 1, 2011*) (a) Except as provided in  
216 subsections (b) and (c) of this section, a court of probate lacking  
217 jurisdiction under section 10 of this act has special jurisdiction to do  
218 any of the following if the court of probate makes the necessary  
219 findings set forth in subdivisions (1) to (3), inclusive, of subsection (a)  
220 of section 45a-654 of the general statutes:

221 (1) Appoint a temporary conservator of the person or a temporary  
222 conservator of the estate in an emergency pursuant to subsection (a) of  
223 section 45a-654 of the general statutes for a term not exceeding sixty  
224 days for a respondent who is physically present in this state; or

225 (2) Appoint a temporary conservator of the person or a temporary

226 conservator of the estate for a conserved person for whom a  
227 provisional order to transfer the proceeding from another state has  
228 been issued under procedures similar to those in section 17 of this act.

229 (b) If an application for the appointment of a temporary conservator  
230 of the person or a temporary conservator of the estate in an emergency  
231 is brought in this state and this state was not the respondent's home  
232 state on the date the application was filed, the court shall dismiss the  
233 proceeding at the request of the court of the home state, if any,  
234 whether dismissal is requested before or after the emergency  
235 appointment.

236 (c) Prior to the appointment of a temporary conservator of the  
237 person or a temporary conservator of the estate pursuant to this  
238 section, the respondent or the conserved person for whom such  
239 provisional order has been issued may file a written motion for a  
240 hearing with the court of probate. Upon receipt of such motion, the  
241 court of probate shall hold a hearing in accordance with section 45a-  
242 654 of the general statutes, except that the court of probate shall (1)  
243 issue notice to all parties in the manner set forth in subsection (c) of  
244 section 45a-654 of the general statutes, (2) conduct the hearing in the  
245 presence of the respondent or conserved person and provide the  
246 respondent or conserved person the opportunity to provide testimony  
247 regarding the motion, and (3) notify the respondent or conserved  
248 person that such hearing may result in the court having special  
249 jurisdiction to appoint a temporary conservator of the person or  
250 temporary conservator of the estate in this state. If a written motion is  
251 filed under this subsection, the court of probate shall not have special  
252 jurisdiction under this section unless the court of probate finds that (A)  
253 the respondent or conserved person understands the implications of  
254 such special jurisdiction, and (B) such special jurisdiction is in the best  
255 interests of the respondent or conserved person.

256 Sec. 12. (NEW) (*Effective October 1, 2011*) Except as otherwise  
257 provided in section 11 of this act, a court that has appointed a  
258 conservator of the person or issued a conservator of the estate order

259 consistent with the requirements of sections 1 to 23, inclusive, of this  
260 act and part IV of chapter 802h of the general statutes has exclusive  
261 and continuing jurisdiction over the proceeding until it is terminated  
262 by the court or the appointment or order expires by its own terms.

263 Sec. 13. (NEW) (*Effective October 1, 2011*) (a) A court of probate  
264 having jurisdiction under section 10 of this act to appoint a conservator  
265 of the person or to issue a conservator of the estate order may decline  
266 to exercise its jurisdiction if it determines at any time that a court of  
267 another state is a more appropriate forum.

268 (b) If a court of probate declines to exercise its jurisdiction under  
269 subsection (a) of this section, the court of probate shall either dismiss  
270 the proceeding or stay the proceeding for not more than ninety days to  
271 allow for a petition to be filed in a more appropriate forum that has  
272 jurisdiction to appoint a conservator of the person or issue a  
273 conservator of the estate order.

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

276 (1) Any expressed preference of the respondent;

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

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

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

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

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

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

287 (8) The procedures necessary to present evidence;

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

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

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

295 Sec. 14. (NEW) (*Effective October 1, 2011*) (a) If at any time a court of  
296 probate determines that it acquired jurisdiction to appoint a  
297 conservator of the person or issue a conservator of the estate order  
298 because of unjustifiable conduct of a party, the court shall:

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

301 (2) Rescind any order issued in the case and dismiss the case, except  
302 that, prior to dismissing the case, the court may exercise limited  
303 jurisdiction for not more than ninety days for the limited purpose of  
304 fashioning an appropriate remedy to avoid immediate and irreparable  
305 harm to the mental or physical health or financial or legal affairs of the  
306 person for whom a conservator of the person was appointed or who  
307 was subject to the conservator of the estate order to prevent a  
308 repetition of the unjustifiable conduct.

309 (b) A court of probate that determines it has acquired or maintained  
310 jurisdiction because a party seeking or having sought to invoke its  
311 jurisdiction engaged in unjustifiable conduct may assess against that  
312 party necessary and reasonable expenses, including attorney's fees,  
313 investigative fees, court costs, communication expenses, medical  
314 examination expenses, witness fees and expenses, and travel expenses.  
315 The court may not assess fees, costs or expenses of any kind against  
316 this state or a governmental subdivision, agency or instrumentality of  
317 this state unless authorized by law other than sections 1 to 23,

318 inclusive, of this act.

319       Sec. 15. (NEW) (*Effective October 1, 2011*) If a petition for involuntary  
320 representation is brought in this state and this state was not the  
321 respondent's home state on the date the petition was filed, in addition  
322 to complying with the notice requirements of section 45a-649 of the  
323 general statutes, as amended by this act, notice of the petition shall be  
324 given to those persons who would be entitled to notice of the petition  
325 if a proceeding were brought in the respondent's home state. The  
326 notice shall be given in the same manner as notice is required to be  
327 given under section 45a-649 of the general statutes, as amended by this  
328 act.

329       Sec. 16. (NEW) (*Effective October 1, 2011*) Except for a petition for the  
330 appointment of a temporary conservator of the person or a temporary  
331 conservator of the estate in an emergency under subdivision (1) of  
332 subsection (a) of section 11 of this act, if a petition for involuntary  
333 representation is filed in this state and a petition for appointment of a  
334 conservator of the person or issuance of a conservator of the estate  
335 order is filed in another state and neither petition has been dismissed  
336 or withdrawn, the following rules apply:

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

341       (2) If the Court of Probate does not have jurisdiction under  
342 subdivision (1) or (2) of section 10 of this act, whether at the time the  
343 petition is filed or at any time before the appointment or issuance of  
344 the order, the court shall stay the proceeding and communicate with  
345 the court in the other state. If the court in the other state has  
346 jurisdiction, the Court of Probate shall dismiss the petition unless the  
347 court in the other state determines that the Court of Probate is a more  
348 appropriate forum and jurisdiction in this state is consistent with the  
349 statutes of this state and the Constitution of this state and the  
350 Constitution of the United States.

351       Sec. 17. (NEW) (*Effective October 1, 2011*) (a) Except for an individual  
352 under voluntary representation as provided in section 45a-647 of the  
353 general statutes, a conserved person, a conserved person's attorney, a  
354 conservator of the person or a conservator of the estate appointed in  
355 this state or any person who has received notice pursuant to  
356 subdivision (2) of subsection (a) of section 45a-649 of the general  
357 statutes, as amended by this act, may petition a court of probate to  
358 transfer the conservatorship of the person or the conservatorship of the  
359 estate, or both, to another state.

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

364       (c) On the court's own motion or on request of the conserved  
365 person, the conserved person's attorney, the conservator of the person  
366 or the conservator of the estate or other person required to be notified  
367 of the petition, the court of probate shall hold a hearing on a petition  
368 filed pursuant to subsection (a) of this section.

369       (d) The court of probate shall issue a provisional order granting a  
370 petition to transfer a conservatorship of the person and shall direct the  
371 conservator of the person to petition for conservatorship of the person  
372 in the other state if the court of probate is satisfied that the  
373 conservatorship of the person will be granted by the court in the other  
374 state and the court finds that:

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

377       (2) An objection to the transfer has not been made or, if an objection  
378 has been made, the objector has not established that the transfer would  
379 be contrary to the interests of the conserved person, including the  
380 reasonable and informed expressed preferences of the conserved  
381 person;

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

395 (4) If the transfer involves the termination of a tenancy or lease of a  
396 conserved person, the sale or disposal of any real property or  
397 household furnishings of the conserved person, a change in the  
398 conserved person's residence or the placement of the conserved person  
399 in an institution for long-term care, as defined in section 45a-656b of  
400 the general statutes, the requirements in section 45a-656b of the  
401 general statutes have been met.

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

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

412 (2) An objection to the transfer has not been made or, if an objection  
413 has been made, the objector has not established that the transfer would  
414 be contrary to the interests of the conserved person, including the

415 reasonable and informed expressed preferences of the conserved  
416 person;

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

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

423 (f) The court of probate shall issue a final order confirming the  
424 transfer and terminating the conservatorship of the person or  
425 conservatorship of the estate on its receipt of:

426 (1) A provisional order accepting the proceeding from the court to  
427 which the proceeding is to be transferred which is issued under  
428 provisions similar to those in section 18 of this act; and

429 (2) The documents required to terminate a conservatorship of the  
430 person or conservatorship of the estate in this state.

431 Sec. 18. (NEW) (*Effective October 1, 2011*) (a) To confirm the transfer  
432 of a conservatorship of the person or a conservatorship of the estate  
433 transferred to this state under provisions similar to those in section 17  
434 of this act, the conservator of the person or conservator of the estate  
435 shall petition the Court of Probate to accept the conservatorship of the  
436 person or conservatorship of the estate. The petition shall include a  
437 certified copy of the other state's provisional order of transfer.

438 (b) Notice of a petition under subsection (a) of this section shall be  
439 given to those persons that would be entitled to notice if the petition  
440 were a petition for the appointment of a conservator of the person or  
441 issuance of a conservator of the estate order in both the transferring  
442 state and this state. The notice shall be given in the same manner as  
443 notice is required to be given under section 45a-649 of the general  
444 statutes, as amended by this act.

445 (c) On the court's own motion or on request of the conservator of the  
446 person, the conservator of the estate, the conserved person or other  
447 person required to be notified of the proceeding, the court of probate  
448 shall hold a hearing on a petition filed pursuant to subsection (a) of  
449 this section.

450 (d) The court of probate shall issue a provisional order granting a  
451 petition filed under subsection (a) of this section unless:

452 (1) An objection is made and the objector establishes that transfer of  
453 the proceeding would be contrary to the interests of the conserved  
454 person, including the reasonable and informed expressed preferences  
455 of the conserved person; or

456 (2) The conservator of the person or conservator of the estate is  
457 ineligible for appointment as a conservator of the person or  
458 conservator of the estate in this state.

459 (e) The court of probate shall issue a final order accepting the  
460 proceeding and appointing the conservator of the person as  
461 conservator of the person in this state or appointing the conservator of  
462 the estate as conservator of the estate in this state on its receipt from  
463 the court from which the proceeding is being transferred of a final  
464 order issued under provisions similar to those in section 17 of this act  
465 transferring the proceeding to this state.

466 (f) Not later than thirty days before the issuance of a final order  
467 accepting the transfer of a conservatorship of the person or  
468 conservatorship of the estate to this state, the court of probate shall  
469 ensure that (1) the conserved person is represented by counsel in  
470 accordance with the provisions of section 45a-649a of the general  
471 statutes, and (2) such person receives notice of his or her rights under  
472 the laws of this state with respect to such transfer.

473 (g) Not later than ninety days after the issuance of a final order  
474 accepting transfer of a conservatorship of the person or  
475 conservatorship of the estate to this state, the court of probate shall

476 determine whether the conservatorship of the person or  
477 conservatorship of the estate needs to be modified to conform to the  
478 laws of this state, and, if so, the court of probate shall order such  
479 modifications.

480 (h) In granting a petition under this section, the court of probate  
481 shall recognize a conservatorship of the person order or  
482 conservatorship of the estate order from the other state, including the  
483 determination of the conserved person's incapacity and the  
484 appointment of the conservator of the person or conservator of the  
485 estate.

486 (i) The denial by a court of probate of a petition to accept a  
487 conservatorship of the person or conservatorship of the estate  
488 transferred from another state does not affect the ability of the  
489 conservator of the person or conservator of the estate to seek  
490 involuntary representation under section 45a-648 of the general  
491 statutes, as amended by this act, if the court has jurisdiction to grant  
492 the involuntary representation other than by reason of the provisional  
493 order of transfer.

494 (j) The granting by a court of probate of a petition to accept a  
495 conservatorship of the person or conservatorship of the estate  
496 transferred from another state shall:

497 (1) Grant to the conserved person the same rights as if such person  
498 had originally had a conservator of the person or conservator of the  
499 estate appointed under part IV of chapter 802h of the general statutes,  
500 including, but not limited to, the right to review and termination of  
501 appointment of a conservator under section 45a-660 of the general  
502 statutes; and

503 (2) Impose upon the conservator of the person or conservator of the  
504 estate the same responsibilities and duties imposed upon a conservator  
505 of the person or conservator of the estate under the laws of this state.

506 Sec. 19. (NEW) (*Effective October 1, 2011*) (a) If a conservator of the

507 person has been appointed in another state and a petition for the  
508 appointment of a conservator of the person is not pending in this state,  
509 the conservator of the person appointed in the other state, after giving  
510 notice to the appointing court of an intent to register the conservator of  
511 the person order in this state, may register the conservator of the  
512 person order in this state as a conservatorship of the person by filing,  
513 as a foreign judgment, certified copies of the order and letters of office  
514 in the court of probate in the district in which the conserved person  
515 resides, is domiciled or is located at the time of the filing of the  
516 certified copies.

517 (b) Each court of probate shall maintain a registry, accessible by the  
518 public, of conservator of the person orders registered under subsection  
519 (a) of this section.

520 Sec. 20. (NEW) (*Effective October 1, 2011*) (a) If a conservator of the  
521 estate has been appointed in another state and a petition for the  
522 appointment of a conservator of the estate is not pending in this state,  
523 the conservator of the estate appointed in the other state, after giving  
524 notice to the appointing court of an intent to register the conservator of  
525 the estate order in this state, may (1) register the conservator of the  
526 estate order in this state as a conservator of the estate order by filing, as  
527 a foreign judgment, certified copies of the order and letters of office  
528 and of any bond in the court of probate in the district in which the  
529 conserved person resides, is domiciled or is located at the time of the  
530 filing of the certified copies, and (2) file certified copies of the  
531 conservator of the estate order with the town clerk of the town in  
532 which any real property of the conserved person is located for  
533 recording on the land records.

534 (b) Each court of probate shall maintain a registry, accessible by the  
535 public, of conservator of the estate orders registered under subsection  
536 (a) of this section.

537 Sec. 21. (NEW) (*Effective October 1, 2011*) (a) On registration in this  
538 state under section 19 of this act of a conservator of the person order  
539 from another state or under section 20 of this act of a conservator of the

540 estate order from another state, the conservator may exercise in this  
541 state all powers authorized in the order of appointment, except as  
542 prohibited under the laws of this state, including maintaining actions  
543 and proceedings in this state and, if the conservator is not a resident of  
544 this state, subject to any conditions imposed on nonresident parties.  
545 The registration of a conservator of the person order under section 19  
546 of this act shall lapse one hundred twenty days after such registration,  
547 except that the registration may be extended for good cause for an  
548 additional one hundred twenty days by the court of probate in this  
549 state having jurisdiction over the location within this state where the  
550 person under the conservator of the person order resides, is domiciled  
551 or is located.

552 (b) A court of probate or, to the extent it lacks jurisdiction, the  
553 Superior Court may grant any relief available under sections 1 to 23,  
554 inclusive, of this act, section 45a-644 of the general statutes, as  
555 amended by this act, section 45a-648 of the general statutes, as  
556 amended by this act, and section 45a-649 of the general statutes, as  
557 amended by this act, and other law of this state to enforce a registered  
558 order.

559 Sec. 22. (NEW) (*Effective October 1, 2011*) In applying and construing  
560 the provisions of sections 1 to 23, inclusive, of this act, section 45a-644  
561 of the general statutes, as amended by this act, section 45a-648 of the  
562 general statutes, as amended by this act, and section 45a-649 of the  
563 general statutes, as amended by this act, consideration shall be given to  
564 the need to promote uniformity of the law with respect to its subject  
565 matter among states that enact such uniform provisions, consistent  
566 with the need to protect individual civil rights and in accordance with  
567 due process.

568 Sec. 23. (NEW) (*Effective October 1, 2011*) This section, sections 1 to  
569 22, inclusive, of this act, section 45a-644 of the general statutes, as  
570 amended by this act, section 45a-648 of the general statutes, as  
571 amended by this act, and section 45a-649 of the general statutes, as  
572 amended by this act, modify, limit and supersede the Electronic

573 Signatures in Global and National Commerce Act, 15 USC 7001 et seq.,  
574 but do not modify, limit or supersede Section 101 of said act, 15 USC  
575 7001(a), or authorize electronic delivery of any of the notices described  
576 in Section 103 of said act, 15 USC 7003(b).

577 Sec. 24. Section 45a-644 of the general statutes is repealed and the  
578 following is substituted in lieu thereof (*Effective October 1, 2011*):

579 For the purposes of sections 45a-644 to 45a-663, inclusive, as  
580 amended by this act, the following terms shall have the following  
581 meanings:

582 (a) "Conservator of the estate" means a person, a municipal or state  
583 official, or a private profit or nonprofit corporation except a hospital or  
584 nursing home facility, as defined in section 19a-521, appointed by the  
585 Court of Probate under the provisions of sections 45a-644 to 45a-663,  
586 inclusive, as amended by this act, to supervise the financial affairs of a  
587 person found to be incapable of managing his or her own affairs or of a  
588 person who voluntarily asks the Court of Probate for the appointment  
589 of a conservator of the estate, and includes a temporary conservator of  
590 the estate appointed under the provisions of section 45a-654.

591 (b) "Conservator of the person" means a person, a municipal or state  
592 official, or a private profit or nonprofit corporation, except a hospital  
593 or nursing home facility, as defined in section 19a-521, appointed by  
594 the Court of Probate under the provisions of sections 45a-644 to 45a-  
595 663, inclusive, as amended by this act, to supervise the personal affairs  
596 of a person found to be incapable of caring for himself or herself or of a  
597 person who voluntarily asks the Court of Probate for the appointment  
598 of a conservator of the person, and includes a temporary conservator  
599 of the person appointed under the provisions of section 45a-654.

600 (c) "Incapable of caring for one's self" or "incapable of caring for  
601 himself or herself" means that a person has a mental, emotional or  
602 physical condition that results in such person being unable to receive  
603 and evaluate information or make or communicate decisions to such  
604 an extent that the person is unable, even with appropriate assistance,

605 to meet essential requirements for personal needs.

606 (d) "Incapable of managing his or her affairs" means that a person  
607 has a mental, emotional or physical condition that results in such  
608 person being unable to receive and evaluate information or make or  
609 communicate decisions to such an extent that the person is unable,  
610 even with appropriate assistance, to perform the functions inherent in  
611 managing his or her affairs, and the person has property that will be  
612 wasted or dissipated unless adequate property management is  
613 provided, or that funds are needed for the support, care or welfare of  
614 the person or those entitled to be supported by the person and that the  
615 person is unable to take the necessary steps to obtain or provide funds  
616 needed for the support, care or welfare of the person or those entitled  
617 to be supported by the person.

618 (e) "Involuntary representation" means the appointment of a  
619 conservator of the person or a conservator of the estate, or both, after a  
620 finding by the Court of Probate that the respondent is incapable of  
621 managing his or her affairs or incapable of caring for himself or herself.

622 (f) "Respondent" means an adult person for whom an application for  
623 involuntary representation has been filed or an adult person who has  
624 requested voluntary representation.

625 (g) "Voluntary representation" means the appointment of a  
626 conservator of the person or a conservator of the estate, or both, upon  
627 request of the respondent, without a finding that the respondent is  
628 incapable of managing his or her affairs or incapable of caring for  
629 himself or herself.

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

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

635 (j) "Property management" means actions to (1) obtain, administer,

636 manage, protect and dispose of real and personal property, intangible  
637 property, business property, benefits and income, and (2) deal with  
638 financial affairs.

639 (k) "Least restrictive means of intervention" means intervention for a  
640 conserved person that is sufficient to provide, within the resources  
641 available to the conserved person either from the conserved person's  
642 own estate or from private or public assistance, for a conserved  
643 person's personal needs or property management while affording the  
644 conserved person the greatest amount of independence and self-  
645 determination.

646 Sec. 25. Section 45a-648 of the general statutes is repealed and the  
647 following is substituted in lieu thereof (*Effective October 1, 2011*):

648 (a) An application for involuntary representation may be filed by  
649 any person alleging that a respondent is incapable of managing his or  
650 her affairs or incapable of caring for himself or herself and stating the  
651 reasons for the alleged incapability. The application shall be filed in the  
652 court of probate in the district in which the respondent resides, is  
653 domiciled or is located at the time of the filing of the application.

654 (b) An application for involuntary representation for a  
655 nondomiciliary of the state [made pursuant to subsection (a) of this  
656 section shall not be granted unless the court finds the (1) respondent is  
657 presently located in the probate district in which the application is  
658 filed; (2) applicant has made reasonable efforts to provide notice to  
659 individuals and applicable agencies listed in subsection (a) of section  
660 45a-649 concerning the respondent; (3) respondent has been provided  
661 an opportunity to return to the respondent's place of domicile, and has  
662 been provided the financial means to return to the respondent's place  
663 of domicile within the respondent's resources, and has declined to  
664 return, or the applicant has made reasonable but unsuccessful efforts  
665 to return the respondent to such respondent's place of domicile; and  
666 (4) requirements of this chapter for the appointment of a conservator  
667 pursuant to an application for involuntary representation have been  
668 met] shall be made pursuant to the provisions of sections 8 to 16,

669 inclusive, of this act.

670 [(c) If, after the appointment of a conservator for a nondomiciliary of  
671 the state the nondomiciliary becomes domiciled in this state, the  
672 provisions of this section regarding involuntary representation of a  
673 nondomiciliary shall no longer apply.

674 (d) The court shall review any involuntary representation of a  
675 nondomiciliary ordered by the court pursuant to subsection (b) of this  
676 section every sixty days. Such involuntary representation shall expire  
677 sixty days after the date such involuntary representation was ordered  
678 by the court or sixty days after the most recent review ordered by the  
679 court, whichever is later, unless the court finds the (1) conserved  
680 person is presently located in the state; (2) conservator has made  
681 reasonable efforts to provide notice to individuals and applicable  
682 agencies listed in subsection (a) of section 45a-649 concerning the  
683 conserved person; (3) conserved person has been provided an  
684 opportunity to return to the conserved person's place of domicile and  
685 has been provided the financial means to return to the conserved  
686 person's place of domicile within the conserved person's resources,  
687 and has declined to return, or the conservator has made reasonable but  
688 unsuccessful efforts to return the conserved person to the conserved  
689 person's place of domicile; and (4) requirements of this chapter for the  
690 appointment of a conservator pursuant to an application for  
691 involuntary representation have been met. As part of its review under  
692 this subsection, the court shall receive and consider reports from the  
693 conservator and from the attorney for the conserved person regarding  
694 the requirements of this subsection.]

695 [(e)] (c) A person is guilty of fraudulent or malicious application or  
696 false testimony when such person (1) wilfully files a fraudulent or  
697 malicious application for involuntary representation or appointment of  
698 a temporary conservator, (2) conspires with another person to file or  
699 cause to be filed such an application, or (3) wilfully testifies either in  
700 court or by report to the court falsely to the incapacity of any person in  
701 any proceeding provided for in sections 45a-644 to 45a-663, inclusive,

702 as amended by this act. Fraudulent or malicious application or false  
703 testimony is a class D felony.

704 Sec. 26. Section 45a-649 of the general statutes is repealed and the  
705 following is substituted in lieu thereof (*Effective October 1, 2011*):

706 (a) (1) Upon an application for involuntary representation, the court  
707 shall issue a citation to the following enumerated parties to appear  
708 before it at a time and place named in the citation, which shall be  
709 served on the parties at least ten days before the hearing date, or in the  
710 case of an application made pursuant to section 17a-543 or 17a-543a, at  
711 least seven days before the hearing date, which date in any event shall  
712 not be more than thirty days after the receipt of the application by the  
713 Court of Probate unless continued for cause shown. Notice of the  
714 hearing shall be sent within thirty days after receipt of the application.  
715 In addition to such notice, (A) notice for a matter brought under  
716 sections 8 to 16, inclusive, of this act shall be given in the manner  
717 provided in section 15 of this act, and (B) notice for a matter brought  
718 under section 17 of this act shall be given in the manner provided in  
719 section 18 of this act.

720 (2) The court shall direct that personal service of the citation be  
721 made, by a state marshal, constable or an indifferent person, upon the  
722 following: The respondent and the respondent's spouse, if any, if the  
723 spouse is not the applicant, except that in cases where the application  
724 is for involuntary representation pursuant to section 17b-456, and there  
725 is no spouse, the court shall order notice by certified mail to the  
726 children of the respondent and if none, the parents of the respondent  
727 and if none, the brothers and sisters of the respondent or their  
728 representatives, and if none, the next of kin of such respondent.

729 (3) The court shall order such notice as it directs to the following:  
730 (A) The applicant; (B) the person in charge of welfare in the town  
731 where the respondent is domiciled or resident and, if there is no such  
732 person, the first selectman or chief executive officer of the town if the  
733 respondent is receiving assistance from the town; (C) the  
734 Commissioner of Social Services, if the respondent is in a state-

735 operated institution or receiving aid, care or assistance from the state;  
736 (D) the Commissioner of Veterans' Affairs if the respondent is  
737 receiving veterans' benefits or the Veterans' Home, or both, if the  
738 respondent is receiving aid or care from such home, or both; (E) the  
739 Commissioner of Administrative Services, if the respondent is  
740 receiving aid or care from the state; (F) the children of the respondent  
741 and if none, the parents of the respondent and if none, the brothers  
742 and sisters of the respondent or their representatives; (G) the person in  
743 charge of the hospital, nursing home or some other institution, if the  
744 respondent is in a hospital, nursing home or some other institution.

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

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

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

760 "POSSIBLE CONSEQUENCES OF THE APPOINTMENT OF A  
761 CONSERVATOR FOR YOU

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

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

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

780 If, after a hearing on the application, the court decides that you lack  
781 the ability to care for yourself, pay your bills or otherwise manage  
782 your affairs, the court may review any alternative plans you have to  
783 get assistance to handle your own affairs that do not require  
784 appointment of a conservator. If the court decides that there are no  
785 adequate alternatives to the appointment of a conservator, the court  
786 may appoint a conservator and assign the conservator responsibility  
787 for some or all of the duties listed below. While the purpose of a  
788 conservator is to help you, you should be aware that the appointment  
789 of a conservator limits your rights. Among the areas that may be  
790 affected are:

- 791 - Accessing and budgeting your money
- 792 - Deciding where you live
- 793 - Making medical decisions for you
- 794 - Paying your bills
- 795 - Managing your real and personal property

796 You may participate in the selection of your conservator. If you

797 have already designated a conservator or if you inform the court of  
798 your choice for a conservator, the court must honor your request  
799 unless the court decides that the person designated by you is not  
800 appropriate.

801 The conservator appointed for you may be a lawyer, a public official  
802 or someone whom you did not know before the appointment. The  
803 conservator will be required to make regular reports to the court about  
804 you. The conservator may charge you a fee, under the supervision of  
805 the court, for being your conservator."

806 (c) Notice to all other persons required by this section shall only be  
807 required to state that involuntary representation is sought, the nature  
808 of the involuntary representation sought, the legal consequences of the  
809 involuntary representation and the date, time and place of the hearing  
810 on the application for involuntary representation.

811 (d) If the respondent is unable to request or obtain an attorney for  
812 any reason, the court shall appoint an attorney to represent the  
813 respondent in any proceeding under this title involving the  
814 respondent. If the respondent is unable to pay for the services of such  
815 attorney, the reasonable compensation for such attorney shall be  
816 established by, and paid from funds appropriated to, the Judicial  
817 Department, except that if funds have not been included in the budget  
818 of the Judicial Department for such purposes, such compensation shall  
819 be established by the Probate Court Administrator and paid from the  
820 Probate Court Administration Fund.

821 (e) If the respondent notifies the court in any manner that the  
822 respondent wants to attend the hearing on the application but is  
823 unable to do so, the court shall schedule the hearing on the application  
824 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, 2011	New section

Sec. 2	<i>October 1, 2011</i>	New section
Sec. 3	<i>October 1, 2011</i>	New section
Sec. 4	<i>October 1, 2011</i>	New section
Sec. 5	<i>October 1, 2011</i>	New section
Sec. 6	<i>October 1, 2011</i>	New section
Sec. 7	<i>October 1, 2011</i>	New section
Sec. 8	<i>October 1, 2011</i>	New section
Sec. 9	<i>October 1, 2011</i>	New section
Sec. 10	<i>October 1, 2011</i>	New section
Sec. 11	<i>October 1, 2011</i>	New section
Sec. 12	<i>October 1, 2011</i>	New section
Sec. 13	<i>October 1, 2011</i>	New section
Sec. 14	<i>October 1, 2011</i>	New section
Sec. 15	<i>October 1, 2011</i>	New section
Sec. 16	<i>October 1, 2011</i>	New section
Sec. 17	<i>October 1, 2011</i>	New section
Sec. 18	<i>October 1, 2011</i>	New section
Sec. 19	<i>October 1, 2011</i>	New section
Sec. 20	<i>October 1, 2011</i>	New section
Sec. 21	<i>October 1, 2011</i>	New section
Sec. 22	<i>October 1, 2011</i>	New section
Sec. 23	<i>October 1, 2011</i>	New section
Sec. 24	<i>October 1, 2011</i>	45a-644
Sec. 25	<i>October 1, 2011</i>	45a-648
Sec. 26	<i>October 1, 2011</i>	45a-649

**JUD**      *Joint Favorable Subst.*

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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.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill addresses various jurisdictional issues related to inter-state conservatorship proceedings and will not result in a fiscal impact to the Office of the Probate Court Administrator.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****sSB 1053*****AN ACT CONCERNING THE CONNECTICUT UNIFORM ADULT PROTECTIVE PROCEEDINGS JURISDICTION ACT.*****SUMMARY:**

This bill establishes rules and procedures for Connecticut probate courts to interact with courts in other states about conservatorships. It applies to proceedings regarding a conservator of (1) a person or someone appointed by an out-of-state court to make decisions for an adult and (2) the estate or someone appointed by an out-of-state court to manage an adult's property. As used in the bill, other states include the other 49 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 replaces current law on appointing a conservator for someone not domiciled in Connecticut with new provisions on the probate court's jurisdiction. It (1) establishes factors the probate court must consider when deciding whether to decline jurisdiction because another state is a more appropriate forum and (2) authorizes special jurisdiction to allow the probate court to take limited actions, such as appointing a temporary conservator, when the court does not otherwise have jurisdiction.

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

It (1) allows conservators appointed in another state to register with

the appropriate probate court in Connecticut, (2) requires probate courts to create a public registry of this information, and (3) allows the conservator to exercise his or her powers in Connecticut except as prohibited by Connecticut law.

The bill also 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.

The bill applies to conservator of the person or estate proceedings begun on or after October 1, 2011. Its provisions on communicating with out-of-state courts, interstate transfers, and registering out-of-state appointments apply to proceedings begun before October 1, 2011, regardless of whether a conservator of the person or estate order has been issued, but the bill's jurisdictional provisions do not.

EFFECTIVE DATE: October 1, 2011

## **§ 2 — DEFINITIONS**

The bill defines several terms to facilitate interactions between Connecticut probate courts and courts in other states regarding conservators.

The bill applies to “conservators of the estate,” 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 manage the property of an adult. A “conservator of the estate 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 of the estate or another court order related to managing an adult's property. A “conservator of the estate proceeding” is a judicial proceeding held under Connecticut law on conservators or an out-of-state judicial proceeding where a conservator of the estate order is sought or has been issued.

The bill also applies to “conservators of the person,” which it

defines as a (1) conservator of the person under Connecticut law 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). A “conservator of the person order” is an (1) order appointing a conservator of the person under Connecticut law or (2) order by an out-of-state court appointing a conservator of the person. A “conservator of the person proceeding” is a judicial proceeding held (1) under Connecticut law on conservators where an order to appoint a conservator of the person is sought or has been issued or (2) by an out-of-state court where an order to appoint a conservator of the person is sought or has been issued.

Under the bill, a conservator can be 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.

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 appointed a conservator of the person or estate. An “involuntary representation” means appointment of a conservator of the person, estate, or both after a probate court finding that the person cannot manage his or her affairs or is incapable of caring for himself or herself.

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 authorizes Connecticut probate courts to communicate with courts in other states about proceedings arising under (1) the bill or (2) Connecticut law on conservators. The court must allow the parties to participate in the communication, record it, and give parties access to

the recording. However, courts may communicate about schedules, calendars, court records, or other administrative matters without making a recording or allowing the parties to participate.

**§ 6 — Requests To or From a Court of Another State Regarding Involuntary Representation**

Probate courts hold involuntary representation proceedings when someone alleges that a person is incapable of managing his or her affairs or caring for himself or herself.

To the extent allowed or required by law, the bill allows a probate court in an involuntary representation proceeding 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 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 when it is necessary for the court's determination, including a person who is the subject of the proceeding or had a conservator appointed for him or her (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); and

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

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 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 eliminates the current provisions on appointing a conservator for someone not domiciled in Connecticut. Instead, it creates new provisions on when the probate courts have jurisdiction to

appoint a conservator under Connecticut law.

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 the:

1. person is presently located in the district where the application is filed;
2. applicant made reasonable efforts to provide notice to individuals and applicable agencies about the person;
3. (a) 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) applicant made reasonable but unsuccessful efforts to return the person to his or her place of domicile; and
4. 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 on 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.

### **§§ 8-11 — Jurisdiction**

The bill subjects proceedings for involuntary representation in Connecticut to existing law on conservators but determines jurisdiction under the following provisions. The 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 no home state, 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, the conditions for which are described below;
3. Connecticut probate court does not otherwise have jurisdiction, but (a) the person's home state and all significant-connection states decline jurisdiction because Connecticut is the more appropriate forum and (b) jurisdiction in Connecticut is consistent with Connecticut's statutes and constitution and the federal constitution; or
4. special jurisdiction exists (see below).

The bill requires the probate court to grant the parties the opportunity to present facts and arguments before it makes a decision on jurisdiction.

**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 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 conditions 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.
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.

**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 60 days for someone who is physically in Connecticut (current law for temporary conservators 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).

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.

If Connecticut is not the person’s home state when an emergency application is filed, the bill requires the court to dismiss the application when the court of the home state requests it, regardless of whether it is before or after an emergency appointment.

**Hearing.** The bill allows the person who is the subject of an application for a temporary conservator or a conserved person under a provisional order to file a written motion for a hearing before the temporary conservator’s appointment. The court must hold a hearing under current law’s temporary conservator provisions but it must (1) give the notice currently required for a temporary conservator proceeding (it cannot excuse notice and have an ex parte hearing), (2) conduct the hearing in the respondent’s or conserved person’s presence and give him or her an opportunity to provide testimony, and (3) notify the respondent or conserved person that the hearing may result in the court having special jurisdiction to appoint a temporary conservator.

To exercise special jurisdiction, the bill requires the probate court to find that (1) the respondent or conserved person understands special jurisdiction’s implications and (2) special jurisdiction is in his or her best interests.

### **§ 12 — Continuing Jurisdiction**

The bill gives a court that appointed a conservator of the person or issued a conservator of the estate 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 to appoint a conservator of the person or issue a conservator of the estate order 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 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 respondent;
2. whether he or she was, or is likely to be abused, neglected, or exploited and which state could best protect the person;
3. the length of time the respondent was physically present in or a legal resident of Connecticut or another state;
4. the person's physical 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 most appropriate forum.

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**§§ 2 and 14 — Obtaining Jurisdiction by a Party's Unjustifiable Conduct**

If a probate court determines at any time that it acquired jurisdiction to appoint a conservator of the person or issue a conservator of the estate 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, medical examination 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 conservator of the person or estate, or any other person allowed by a court to participate in a proceeding.

**§§ 15-16 — PETITIONS****§ 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 is 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 conservator or issuance of a conservator of the estate 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.
2. If the probate court does not have jurisdiction under the bill when 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.

### **§§ 17-18 — INTERSTATE TRANSFERS**

The bill establishes conditions and procedures for the probate court to (1) transfer a conservatorship to another state and (2) accept a conservatorship from another state.

### **§ 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 a provisional order granting a petition to transfer a conservatorship of the person and direct the conservator to petition for conservatorship in the other state if:

1. it is satisfied that the conservatorship 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 reasonable 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) includes ascertaining the person's views, (e) includes making 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;
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 reasonable 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 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 conservatorship in Connecticut.

### **§ 18 — Transfer to Connecticut**

The bill requires a conservator seeking to confirm a transfer of a conservatorship to Connecticut to petition the probate court to accept the conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

The bill requires that notice be sent 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 conservator, (2) the conserved person, or (3) someone who received notice.

The court must issue a provisional order 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 reasonable and informed expressed preferences or
2. the 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 conservator in Connecticut 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 ensure that the conserved 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 conservatorship order from the other state, including the determination of the person's incapacity and the appointment of the conservator.

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

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

1. the conserved 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 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 conservator appointed in another state to register the conservatorship order in Connecticut by filing certified copies of the order and letters of office as a foreign judgment in the probate court for the district where the conserved person resides, is domiciled, or is located at the time of filing. To register, no appointment petitions may be pending in Connecticut and the conservator must give notice to the appointing court. Conservators of the estate must also submit any bond and may submit certified copies of the documents for recording on the land records in a town where a conserved person has real property. The bill requires each probate court to maintain a public

registry of these orders.

On registration, the bill allows a 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 conservator is not a resident of this state, subject to any conditions imposed on nonresident parties. The registration of a conservator of the person order lapses 120 days after registration, but it can be extended for 120 days for good cause by a probate court for the district where the subject of the order resides, is domiciled, or is 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 its provisions, 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 ON ELECTRONIC SIGNATURES**

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 the following notices specified in federal law.

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.
5. The recall or material failure of a product that risks health or safety (15 U.S.C. § 7003(b)).

## **BACKGROUND**

### ***Electronic Signatures in Global and National Commerce Act***

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, among others things, the consumer:

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

2. 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. 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.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 34 Nay 0 (03/11/2011)