



House of Representatives

General Assembly

File No. 287

February Session, 2012

House Bill No. 5150

House of Representatives, April 5, 2012

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the 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, 2012*) 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, 2012*) 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, 2012*) (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, 2012.

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 2012, 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, 2012*) 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, 2012*) (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 (e) Nothing in this section shall limit any party's right to present
93 facts and legal arguments before a decision on jurisdiction is entered
94 pursuant to the provisions of sections 8 to 16, inclusive, of this act.

95 Sec. 6. (NEW) (*Effective October 1, 2012*) (a) In a proceeding for
96 involuntary representation in this state, a court of probate may request,
97 to the extent permitted or required by the laws of this state, the
98 appropriate court of another state to do any of the following:

99 (1) Hold an evidentiary hearing;

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

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

104 statutes;

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

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

113 (6) Issue an order necessary to assure the appearance in the
114 proceeding of a person whose presence is necessary for the court to
115 make a determination, including the respondent or conserved person,
116 subject to the provisions of subsection (e) of section 45a-649 of the
117 general statutes, as amended by this act, subsection (e) of section 45a-
118 650 of the general statutes or subsection (g) of section 45a-656b of the
119 general statutes; or

120 (7) Issue an order authorizing the release of medical, financial,
121 criminal or other relevant information in that state, including protected
122 health information as defined in 45 CFR 160.103, as amended from
123 time to time, subject to the provisions of subsection (g) of section 45a-
124 649a of the general statutes.

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

131 Sec. 7. (NEW) (*Effective October 1, 2012*) (a) In a proceeding for
132 involuntary representation in this state, in addition to other
133 procedures that may be available, testimony of a witness who is
134 located in another state may be offered by deposition or other means

135 allowable in this state for testimony taken in another state. A court of
136 probate on its own motion may order that the testimony of a witness
137 be taken in another state and may prescribe the manner in which and
138 the terms upon which the testimony is to be taken.

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

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

149 Sec. 8. (NEW) (*Effective October 1, 2012*) (a) As used in this section
150 and sections 9 to 16, inclusive, of this act:

151 (1) "Emergency" means a circumstance that will result in immediate
152 and irreparable harm to the mental or physical health or financial or
153 legal affairs of the respondent and includes a circumstance in which a
154 temporary conservator of the person or temporary conservator of the
155 estate may be appointed and may serve under subsection (a) of section
156 45a-654 of the general statutes;

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

165 (3) "Significant-connection state" means a state, other than the home

166 state, with which a respondent has a significant connection other than
167 mere physical presence and in which substantial evidence concerning
168 the respondent is available.

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

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

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

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

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

181 Sec. 9. (NEW) (*Effective October 1, 2012*) A proceeding for
182 involuntary representation in this state shall be subject to the
183 provisions of part IV of chapter 802h of the general statutes, except that
184 (1) jurisdiction shall be determined in accordance with sections 8 to 16,
185 inclusive, of this act, and (2) the court of probate shall grant the parties
186 the opportunity to present facts and legal arguments before issuing a
187 decision on jurisdiction.

188 Sec. 10. (NEW) (*Effective October 1, 2012*) A court of probate in this
189 state has jurisdiction to appoint a conservator of the person or
190 conservator of the estate for a respondent pursuant to part IV of
191 chapter 802h of the general statutes if:

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

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

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

198 (B) The respondent has a home state, a petition for appointment of a
199 conservator of the person or issuance of a conservator of the estate
200 order is not pending in a court of that state or another significant-
201 connection state, and, before the court makes the appointment or
202 issues the order:

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

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

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

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

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

218 Sec. 11. (NEW) (*Effective October 1, 2012*) (a) Except as provided in
219 subsections (b) and (c) of this section, a court of probate lacking
220 jurisdiction under subdivisions (1) to (3), inclusive, of section 10 of this
221 act has special jurisdiction to do any of the following if the court of
222 probate makes the necessary findings set forth in subdivisions (1) to
223 (3), inclusive, of subsection (a) of section 45a-654 of the general
224 statutes:

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

229 (2) Appoint a temporary conservator of the person or a temporary
230 conservator of the estate for a conserved person for whom a
231 provisional order to transfer the proceeding from another state has
232 been issued under procedures similar to those in section 17 of this act.

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

240 (c) In any proceeding under this section, the court of probate shall
241 hold a hearing, in the manner set forth in section 45a-654 of the general
242 statutes, upon written request of the respondent or person subject to
243 the order in the proceeding.

244 Sec. 12. (NEW) (*Effective October 1, 2012*) Except as otherwise
245 provided in section 11 of this act, a court that has appointed a
246 conservator of the person or issued a conservator of the estate order
247 consistent with the requirements of sections 1 to 23, inclusive, of this
248 act and part IV of chapter 802h of the general statutes has exclusive
249 and continuing jurisdiction over the proceeding until it is terminated
250 by the court or the appointment or order expires by its own terms.

251 Sec. 13. (NEW) (*Effective October 1, 2012*) (a) A court of probate
252 having jurisdiction under section 10 of this act to appoint a conservator
253 of the person or to issue a conservator of the estate order may decline
254 to exercise its jurisdiction if it determines at any time that a court of
255 another state is a more appropriate forum.

256 (b) If a court of probate declines to exercise its jurisdiction under
257 subsection (a) of this section, the court of probate shall either dismiss
258 the proceeding or stay the proceeding for not more than ninety days to
259 allow for a petition to be filed in a more appropriate forum that has
260 jurisdiction to appoint a conservator of the person or issue a
261 conservator of the estate order.

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

264 (1) Any expressed preference of the respondent;

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

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

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

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

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

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

275 (8) The procedures necessary to present evidence;

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

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

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

283 Sec. 14. (NEW) (*Effective October 1, 2012*) (a) If at any time a court of
284 probate determines that it acquired jurisdiction to appoint a
285 conservator of the person or issue a conservator of the estate order
286 because of unjustifiable conduct of a party, the court shall:

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

289 (2) Rescind any order issued in the case and dismiss the case, except
290 that, prior to dismissing the case, the court may exercise limited
291 jurisdiction for not more than ninety days for the limited purpose of
292 fashioning an appropriate remedy to avoid immediate and irreparable
293 harm to the mental or physical health or financial or legal affairs of the
294 person for whom a conservator of the person was appointed or who
295 was subject to the conservator of the estate order to prevent a
296 repetition of the unjustifiable conduct.

297 (b) A court of probate that determines it has acquired or maintained
298 jurisdiction because a party seeking or having sought to invoke its
299 jurisdiction engaged in unjustifiable conduct may assess against that
300 party necessary and reasonable expenses, including attorney's fees,
301 investigative fees, court costs, communication expenses, medical
302 examination expenses, witness fees and expenses, and travel expenses.
303 The court may not assess fees, costs or expenses of any kind against
304 this state or a governmental subdivision, agency or instrumentality of
305 this state unless authorized by law other than sections 1 to 23,
306 inclusive, of this act.

307 Sec. 15. (NEW) (*Effective October 1, 2012*) If a petition for involuntary
308 representation is brought in this state and this state was not the
309 respondent's home state on the date the petition was filed, in addition
310 to complying with the notice requirements of section 45a-649 of the
311 general statutes, as amended by this act, notice of the petition shall be
312 given to those persons who would be entitled to notice of the petition
313 if a proceeding were brought in the respondent's home state. The
314 notice shall be given in the same manner as notice is required to be
315 given under section 45a-649 of the general statutes, as amended by this

316 act.

317 Sec. 16. (NEW) (*Effective October 1, 2012*) Except for a petition for the
318 appointment of a temporary conservator of the person or a temporary
319 conservator of the estate in an emergency under subdivision (1) of
320 subsection (a) of section 11 of this act, if a petition for involuntary
321 representation is filed in this state and a petition for appointment of a
322 conservator of the person or issuance of a conservator of the estate
323 order is filed in another state and neither petition has been dismissed
324 or withdrawn, the following rules apply:

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

329 (2) If the Court of Probate does not have jurisdiction under
330 subdivision (1) or (2) of section 10 of this act, whether at the time the
331 petition is filed or at any time before the appointment or issuance of
332 the order, the court shall stay the proceeding and communicate with
333 the court in the other state. If the court in the other state has
334 jurisdiction, the Court of Probate shall dismiss the petition unless the
335 court in the other state determines that the Court of Probate is a more
336 appropriate forum and jurisdiction in this state is consistent with the
337 statutes of this state and the Constitution of this state and the
338 Constitution of the United States.

339 Sec. 17. (NEW) (*Effective October 1, 2012*) (a) Except for an individual
340 under voluntary representation as provided in section 45a-647 of the
341 general statutes, a conserved person, a conserved person's attorney, a
342 conservator of the person or a conservator of the estate appointed in
343 this state or any person who has received notice pursuant to
344 subdivision (2) of subsection (a) of section 45a-649 of the general
345 statutes, as amended by this act, may petition a court of probate to
346 transfer the conservatorship of the person or the conservatorship of the
347 estate, or both, to another state.

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

352 (c) On the court's own motion or on request of the conserved
353 person, the conserved person's attorney, the conservator of the person
354 or the conservator of the estate or other person required to be notified
355 of the petition, the court of probate shall hold a hearing on a petition
356 filed pursuant to subsection (a) of this section.

357 (d) The court of probate shall issue a provisional order granting a
358 petition to transfer a conservatorship of the person and shall direct the
359 conservator of the person to petition for conservatorship of the person
360 in the other state if the court of probate is satisfied that the
361 conservatorship of the person will be granted by the court in the other
362 state and the court finds that:

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

365 (2) An objection to the transfer has not been made or, if an objection
366 has been made, the objector has not established that the transfer would
367 be contrary to the interests of the conserved person, including the
368 reasonable and informed expressed preferences of the conserved
369 person;

370 (3) Plans for care and services for the conserved person in the other
371 state are reasonable and sufficient, have been made after allowing the
372 conserved person the opportunity to participate meaningfully in
373 decision making in accordance with the conserved person's abilities,
374 and include assisting the conserved person in removing obstacles to
375 independence, assisting the conserved person in achieving self-
376 reliance, ascertaining the conserved person's views, making decisions
377 in conformance with the reasonable and informed expressed
378 preferences of the conserved person, and making all reasonable efforts
379 to make decisions in conformance with the conserved person's

380 expressed health care preferences, including health care instructions
381 and other wishes, if any, described in any validly executed health care
382 instructions or otherwise; and

383 (4) If the transfer involves the termination of a tenancy or lease of a
384 conserved person, the sale or disposal of any real property or
385 household furnishings of the conserved person, a change in the
386 conserved person's residence or the placement of the conserved person
387 in an institution for long-term care, as defined in section 45a-656b of
388 the general statutes, the requirements in section 45a-656b of the
389 general statutes have been met.

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

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

400 (2) An objection to the transfer has not been made or, if an objection
401 has been made, the objector has not established that the transfer would
402 be contrary to the interests of the conserved person, including the
403 reasonable and informed expressed preferences of the conserved
404 person;

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

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

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

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

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

419 Sec. 18. (NEW) (*Effective October 1, 2012*) (a) To confirm the transfer
420 of a conservatorship of the person or a conservatorship of the estate
421 transferred to this state under provisions similar to those in section 17
422 of this act, the conservator of the person or conservator of the estate
423 shall petition the Court of Probate to accept the conservatorship of the
424 person or conservatorship of the estate. The petition shall include a
425 certified copy of the other state's provisional order of transfer.

426 (b) Notice of a petition under subsection (a) of this section shall be
427 given to those persons that would be entitled to notice if the petition
428 were a petition for the appointment of a conservator of the person or
429 issuance of a conservator of the estate order in both the transferring
430 state and this state. The notice shall be given in the same manner as
431 notice is required to be given under section 45a-649 of the general
432 statutes, as amended by this act.

433 (c) On the court's own motion or on request of the conservator of the
434 person, the conservator of the estate, the conserved person or other
435 person required to be notified of the proceeding, the court of probate
436 shall hold a hearing on a petition filed pursuant to subsection (a) of
437 this section.

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

440 (1) An objection is made and the objector establishes that transfer of
441 the proceeding would be contrary to the interests of the conserved

442 person, including the reasonable and informed expressed preferences
443 of the conserved person; or

444 (2) The conservator of the person or conservator of the estate is
445 ineligible for appointment as a conservator of the person or
446 conservator of the estate in this state.

447 (e) The court of probate shall issue a final order accepting the
448 proceeding and appointing the conservator of the person as
449 conservator of the person in this state or appointing the conservator of
450 the estate as conservator of the estate in this state on its receipt from
451 the court from which the proceeding is being transferred of a final
452 order issued under provisions similar to those in section 17 of this act
453 transferring the proceeding to this state.

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

461 (g) Not later than ninety days after the issuance of a final order
462 accepting transfer of a conservatorship of the person or
463 conservatorship of the estate to this state, the court of probate shall
464 determine whether the conservatorship of the person or
465 conservatorship of the estate needs to be modified to conform to the
466 laws of this state, and, if so, the court of probate shall order such
467 modifications.

468 (h) In granting a petition under this section, the court of probate
469 shall recognize a conservatorship of the person order or
470 conservatorship of the estate order from the other state, including the
471 determination of the conserved person's incapacity and the
472 appointment of the conservator of the person or conservator of the
473 estate.

474 (i) The denial by a court of probate of a petition to accept a
475 conservatorship of the person or conservatorship of the estate
476 transferred from another state does not affect the ability of the
477 conservator of the person or conservator of the estate to seek
478 involuntary representation under section 45a-648 of the general
479 statutes, as amended by this act, if the court has jurisdiction to grant
480 the involuntary representation other than by reason of the provisional
481 order of transfer.

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

485 (1) Grant to the conserved person the same rights as if such person
486 had originally had a conservator of the person or conservator of the
487 estate appointed under part IV of chapter 802h of the general statutes,
488 including, but not limited to, the right to review and termination of
489 appointment of a conservator under section 45a-660 of the general
490 statutes; and

491 (2) Impose upon the conservator of the person or conservator of the
492 estate the same responsibilities and duties imposed upon a conservator
493 of the person or conservator of the estate under the laws of this state.

494 Sec. 19. (NEW) (*Effective October 1, 2012*) (a) If a conservator of the
495 person has been appointed in another state and a petition for the
496 appointment of a conservator of the person is not pending in this state,
497 the conservator of the person appointed in the other state, after giving
498 notice to the appointing court of an intent to register the conservator of
499 the person order in this state, may register the conservator of the
500 person order in this state as a conservatorship of the person by filing,
501 as a foreign judgment, certified copies of the order and letters of office
502 in the court of probate in the district in which the conserved person
503 resides, is domiciled or is located at the time of the filing of the
504 certified copies.

505 (b) Each court of probate shall maintain a registry, accessible by the

506 public, of conservator of the person orders registered under subsection
507 (a) of this section.

508 Sec. 20. (NEW) (*Effective October 1, 2012*) (a) If a conservator of the
509 estate has been appointed in another state and a petition for the
510 appointment of a conservator of the estate is not pending in this state,
511 the conservator of the estate appointed in the other state, after giving
512 notice to the appointing court of an intent to register the conservator of
513 the estate order in this state, may (1) register the conservator of the
514 estate order in this state as a conservator of the estate order by filing, as
515 a foreign judgment, certified copies of the order and letters of office
516 and of any bond in the court of probate in the district in which the
517 conserved person resides, is domiciled or is located at the time of the
518 filing of the certified copies, and (2) file certified copies of the
519 conservator of the estate order with the town clerk of the town in
520 which any real property of the conserved person is located for
521 recording on the land records.

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

525 Sec. 21. (NEW) (*Effective October 1, 2012*) (a) On registration in this
526 state under section 19 of this act of a conservator of the person order
527 from another state or under section 20 of this act of a conservator of the
528 estate order from another state, the conservator may exercise in this
529 state all powers authorized in the order of appointment, except as
530 prohibited under the laws of this state, including maintaining actions
531 and proceedings in this state and, if the conservator is not a resident of
532 this state, subject to any conditions imposed on nonresident parties.
533 The registration of a conservator of the person order under section 19
534 of this act shall lapse one hundred twenty days after such registration,
535 except that the registration may be extended for good cause for an
536 additional one hundred twenty days by the court of probate in this
537 state having jurisdiction over the location within this state where the
538 person under the conservator of the person order resides, is domiciled

539 or is located.

540 (b) A court of probate or, to the extent it lacks jurisdiction, the
541 Superior Court may grant any relief available under sections 1 to 23,
542 inclusive, of this act, section 45a-644 of the general statutes, as
543 amended by this act, section 45a-648 of the general statutes, as
544 amended by this act, and section 45a-649 of the general statutes, as
545 amended by this act, and other law of this state to enforce a registered
546 order.

547 Sec. 22. (NEW) (*Effective October 1, 2012*) In applying and construing
548 the provisions of sections 1 to 23, inclusive, of this act, section 45a-644
549 of the general statutes, as amended by this act, section 45a-648 of the
550 general statutes, as amended by this act, and section 45a-649 of the
551 general statutes, as amended by this act, consideration shall be given to
552 the need to promote uniformity of the law with respect to its subject
553 matter among states that enact such uniform provisions, consistent
554 with the need to protect individual civil rights and in accordance with
555 due process.

556 Sec. 23. (NEW) (*Effective October 1, 2012*) This section, sections 1 to
557 22, inclusive, of this act, section 45a-644 of the general statutes, as
558 amended by this act, section 45a-648 of the general statutes, as
559 amended by this act, and section 45a-649 of the general statutes, as
560 amended by this act, modify, limit and supersede the Electronic
561 Signatures in Global and National Commerce Act, 15 USC 7001 et seq.,
562 but do not modify, limit or supersede Section 101 of said act, 15 USC
563 7001(a), or authorize electronic delivery of any of the notices described
564 in Section 103 of said act, 15 USC 7003(b).

565 Sec. 24. Section 45a-644 of the general statutes is repealed and the
566 following is substituted in lieu thereof (*Effective October 1, 2012*):

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

570 (a) "Conservator of the estate" means a person, a municipal or state
571 official, or a private profit or nonprofit corporation except a hospital or
572 nursing home facility as defined in section 19a-521, appointed by the
573 Court of Probate under the provisions of sections 45a-644 to 45a-663,
574 inclusive, as amended by this act, to supervise the financial affairs of a
575 person found to be incapable of managing his or her own affairs or of a
576 person who voluntarily asks the Court of Probate for the appointment
577 of a conservator of the estate, and includes a temporary conservator of
578 the estate appointed under the provisions of section 45a-654.

579 (b) "Conservator of the person" means a person, a municipal or state
580 official, or a private profit or nonprofit corporation, except a hospital
581 or nursing home facility as defined in section 19a-521, appointed by
582 the Court of Probate under the provisions of sections 45a-644 to 45a-
583 663, inclusive, as amended by this act, to supervise the personal affairs
584 of a person found to be incapable of caring for himself or herself or of a
585 person who voluntarily asks the Court of Probate for the appointment
586 of a conservator of the person, and includes a temporary conservator
587 of the person appointed under the provisions of section 45a-654.

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

594 (d) "Incapable of managing his or her affairs" means that a person
595 has a mental, emotional or physical condition that results in such
596 person being unable to receive and evaluate information or make or
597 communicate decisions to such an extent that the person is unable,
598 even with appropriate assistance, to perform the functions inherent in
599 managing his or her affairs, and the person has property that will be
600 wasted or dissipated unless adequate property management is
601 provided, or that funds are needed for the support, care or welfare of
602 the person or those entitled to be supported by the person and that the

603 person is unable to take the necessary steps to obtain or provide funds
604 needed for the support, care or welfare of the person or those entitled
605 to be supported by the person.

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

610 (f) "Respondent" means an adult person for whom an application for
611 involuntary representation has been filed or an adult person who has
612 requested voluntary representation.

613 (g) "Voluntary representation" means the appointment of a
614 conservator of the person or a conservator of the estate, or both, upon
615 request of the respondent, without a finding that the respondent is
616 incapable of managing his or her affairs or incapable of caring for
617 himself or herself.

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

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

623 (j) "Property management" means actions to (1) obtain, administer,
624 manage, protect and dispose of real and personal property, intangible
625 property, business property, benefits and income, and (2) deal with
626 financial affairs.

627 (k) "Least restrictive means of intervention" means intervention for a
628 conserved person that is sufficient to provide, within the resources
629 available to the conserved person either from the conserved person's
630 own estate or from private or public assistance, for a conserved
631 person's personal needs or property management while affording the
632 conserved person the greatest amount of independence and self-
633 determination.

634 Sec. 25. Section 45a-648 of the general statutes is repealed and the
635 following is substituted in lieu thereof (*Effective October 1, 2012*):

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

642 (b) An application for involuntary representation for a
643 nondomiciliary of the state [made pursuant to subsection (a) of this
644 section shall not be granted unless the court finds the (1) respondent is
645 presently located in the probate district in which the application is
646 filed; (2) applicant has made reasonable efforts to provide notice to
647 individuals and applicable agencies listed in subsection (a) of section
648 45a-649 concerning the respondent; (3) respondent has been provided
649 an opportunity to return to the respondent's place of domicile, and has
650 been provided the financial means to return to the respondent's place
651 of domicile within the respondent's resources, and has declined to
652 return, or the applicant has made reasonable but unsuccessful efforts
653 to return the respondent to such respondent's place of domicile; and
654 (4) requirements of this chapter for the appointment of a conservator
655 pursuant to an application for involuntary representation have been
656 met] shall be made pursuant to the provisions of sections 8 to 16,
657 inclusive, of this act.

658 [(c) If, after the appointment of a conservator for a nondomiciliary of
659 the state the nondomiciliary becomes domiciled in this state, the
660 provisions of this section regarding involuntary representation of a
661 nondomiciliary shall no longer apply.

662 (d) The court shall review any involuntary representation of a
663 nondomiciliary ordered by the court pursuant to subsection (b) of this
664 section every sixty days. Such involuntary representation shall expire
665 sixty days after the date such involuntary representation was ordered
666 by the court or sixty days after the most recent review ordered by the

667 court, whichever is later, unless the court finds the (1) conserved
668 person is presently located in the state; (2) conservator has made
669 reasonable efforts to provide notice to individuals and applicable
670 agencies listed in subsection (a) of section 45a-649 concerning the
671 conserved person; (3) conserved person has been provided an
672 opportunity to return to the conserved person's place of domicile and
673 has been provided the financial means to return to the conserved
674 person's place of domicile within the conserved person's resources,
675 and has declined to return, or the conservator has made reasonable but
676 unsuccessful efforts to return the conserved person to the conserved
677 person's place of domicile; and (4) requirements of this chapter for the
678 appointment of a conservator pursuant to an application for
679 involuntary representation have been met. As part of its review under
680 this subsection, the court shall receive and consider reports from the
681 conservator and from the attorney for the conserved person regarding
682 the requirements of this subsection.]

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

692 Sec. 26. Subsection (a) of section 45a-649 of the general statutes is
693 repealed and the following is substituted in lieu thereof (*Effective*
694 *October 1, 2012*):

695 (a) (1) Upon an application for involuntary representation, the court
696 shall issue a citation to the following enumerated parties to appear
697 before it at a time and place named in the citation, which shall be
698 served on the parties at least ten days before the hearing date, or in the
699 case of an application made pursuant to section 17a-543 or 17a-543a, at

700 least seven days before the hearing date, which date in any event shall
701 not be more than thirty days after the receipt of the application by the
702 Court of Probate unless continued for cause shown. Notice of the
703 hearing shall be sent within thirty days after receipt of the application.
704 In addition to such notice, (A) notice for a matter brought under
705 sections 8 to 16, inclusive, of this act shall be given in the manner
706 provided in section 15 of this act, and (B) notice for a matter brought
707 under section 17 of this act shall be given in the manner provided in
708 section 18 of this act.

709 (2) The court shall direct that personal service of the citation be
710 made, by a state marshal, constable or an indifferent person, upon the
711 following: The respondent and the respondent's spouse, if any, if the
712 spouse is not the applicant, except that in cases where the application
713 is for involuntary representation pursuant to section 17b-456, and there
714 is no spouse, the court shall order notice by certified mail to the
715 children of the respondent and if none, the parents of the respondent
716 and if none, the brothers and sisters of the respondent or their
717 representatives, and if none, the next of kin of such respondent.

718 (3) The court shall order such notice as it directs to the following:
719 (A) The applicant; (B) the person in charge of welfare in the town
720 where the respondent is domiciled or resident and, if there is no such
721 person, the first selectman or chief executive officer of the town if the
722 respondent is receiving assistance from the town; (C) the
723 Commissioner of Social Services, if the respondent is in a state-
724 operated institution or receiving aid, care or assistance from the state;
725 (D) the Commissioner of Veterans' Affairs if the respondent is
726 receiving veterans' benefits or the Veterans' Home, or both, if the
727 respondent is receiving aid or care from such home, or both; (E) the
728 Commissioner of Administrative Services, if the respondent is
729 receiving aid or care from the state; (F) the children of the respondent
730 and if none, the parents of the respondent and if none, the brothers
731 and sisters of the respondent or their representatives; (G) the person in
732 charge of the hospital, nursing home or some other institution, if the
733 respondent is in a hospital, nursing home or some other institution.

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

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012</i>	New section
Sec. 2	<i>October 1, 2012</i>	New section
Sec. 3	<i>October 1, 2012</i>	New section
Sec. 4	<i>October 1, 2012</i>	New section
Sec. 5	<i>October 1, 2012</i>	New section
Sec. 6	<i>October 1, 2012</i>	New section
Sec. 7	<i>October 1, 2012</i>	New section
Sec. 8	<i>October 1, 2012</i>	New section
Sec. 9	<i>October 1, 2012</i>	New section
Sec. 10	<i>October 1, 2012</i>	New section
Sec. 11	<i>October 1, 2012</i>	New section
Sec. 12	<i>October 1, 2012</i>	New section
Sec. 13	<i>October 1, 2012</i>	New section
Sec. 14	<i>October 1, 2012</i>	New section
Sec. 15	<i>October 1, 2012</i>	New section
Sec. 16	<i>October 1, 2012</i>	New section
Sec. 17	<i>October 1, 2012</i>	New section
Sec. 18	<i>October 1, 2012</i>	New section
Sec. 19	<i>October 1, 2012</i>	New section
Sec. 20	<i>October 1, 2012</i>	New section
Sec. 21	<i>October 1, 2012</i>	New section
Sec. 22	<i>October 1, 2012</i>	New section
Sec. 23	<i>October 1, 2012</i>	New section
Sec. 24	<i>October 1, 2012</i>	45a-644
Sec. 25	<i>October 1, 2012</i>	45a-648
Sec. 26	<i>October 1, 2012</i>	45a-649(a)

JUD *Joint Favorable*

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 bill establishes rules and procedures for Connecticut probate courts to interact with courts in other states about conservatorships and does not result in a fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**HB 5150*****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 U.S. jurisdiction. But a probate court may also 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, 2012. The bill's jurisdictional provisions do not apply to proceedings begun before that date but its provision on communicating with out-of-state courts, interstate transfers, and registering out-of-state appointments do apply, regardless of whether a conservator of the person or estate order has been issued.

EFFECTIVE DATE: October 1, 2012

§ 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 a "conservator of the estate," which it defines as a (1) conservator of the estate as used in the probate court and procedures law or (2) person, other than a hospital or nursing home facility, appointed by an out-of-state court 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 probate 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 order (1) appointing a conservator of the person under Connecticut law or (2) 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 “conserved 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 OUT-OF-STATE COURTS

§ 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, make an audio recording of the

communication, 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.

The bill specifies that these provisions do not limit a party's right to present facts and legal arguments before the court enters a decision on jurisdiction under the bill's provisions.

§ 6 — Requests to or From an Out-of-State Court About 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 pursuant to 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 to make a 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 that facilitates 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 jurisdiction to a Connecticut probate court if it receives these types of requests from an out-of-state court, for the limited purpose of granting the request or making reasonable efforts to comply with it.

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

In proceedings for involuntary representation in Connecticut, in addition to other available procedures, the bill allows a witness located out of state to offer testimony by (1) deposition or (2) other means allowable in Connecticut 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 must 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 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 based on the "best evidence rule" (a rule that generally requires the use of an original document in court proceedings).

§§ 8-16, AND 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 probate 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) the 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 for a conservator of the estate was filed or conservator of the person was appointed 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. on the date the petition is filed, 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 as a significant-connection state, one of the following conditions must apply.

1. The person does not have a home state.
2. A court of his or her 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 appoint a temporary conservator of the person or estate:

1. 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. 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.

The bill requires the probate court, on written request of a respondent or person subject to the order in the proceeding, to hold a hearing under Connecticut law on temporary conservators.

§ 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.

§§ 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 Connecticut 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 person's 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 (a) the Connecticut probate court is a more appropriate forum and (b) 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 Connecticut, 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 Connecticut 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 does object 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) include ascertaining the person's views, (e) include 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. either no objection to the transfer is made, or anyone who does object 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 managing 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 the petition 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 after 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 state resident, 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 Connecticut 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 and other laws regarding involuntary representation, 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 or documents 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; and
5. the recall or material failure of a product that risks health or safety (15 USC § 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 USC § 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

Yea 42 Nay 0 (03/21/2012)