
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)