

SENATE BILL NO. 94

BY SENATOR COLOMB (On Recommendation of the Louisiana State Law Institute)

## 1 AN ACT

2 To amend and reenact Code of Civil Procedure Arts. 10(A)(3) and (4) and 4556 and to enact  
3 Chapter 24 of Title 13 of the Louisiana Revised Statutes of 1950, to be comprised  
4 of R.S. 13:4251.101 through 4251.505, relative to adults in need of care; to provide  
5 relative to courts and judicial procedure; to provide relative to jurisdiction and  
6 procedures for actions brought pursuant to the Louisiana Uniform Adult  
7 Guardianship Protective Proceedings Jurisdiction Act; to provide for ancillary  
8 interdiction procedures for protected persons; to provide a short title for the  
9 Louisiana Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act;  
10 to provide certain definitions, terms, procedures, conditions, requirements and  
11 effects; to provide for international application of the Chapter; to provide for  
12 communication between Louisiana courts and courts of other states; to provide for  
13 cooperation between Louisiana courts and courts of other states; to provide for taking  
14 testimony in another state; to provide for exclusive basis; to provide for jurisdiction;  
15 to provide for special jurisdiction; to provide for exclusive and continuing  
16 jurisdiction; to provide for appropriate forums; to provide for jurisdiction declined  
17 by reason of conduct; to provide for notice of proceedings; to provide for  
18 proceedings in more than one state; to provide for transfer of guardianship or  
19 conservatorship proceedings to another state; to provide for accepting guardianship  
20 or conservatorship proceedings transferred from another state; to provide for  
21 registration of guardianship orders; to provide for registration of protective orders;  
22 to provide for the effect of the registration of such orders; to provide for uniformity  
23 of application and construction; to provide relative to the Electronic Signatures in  
24 Global and National Commerce Act; to provide for transitional provision; and to  
25 provide for related matters.

26 Be it enacted by the Legislature of Louisiana:

1 Section 1. Chapter 24 of Title 13 of the Louisiana Revised Statutes of 1950, to be  
2 comprised of R.S. 13:4251.101 through 4251.505, is hereby enacted to read as follows:

3 CHAPTER 24. LOUISIANA UNIFORM ADULT

4 GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

5 JURISDICTION ACT

6 LOUISIANA PREFATORY NOTE

7 Louisiana's version (the Louisiana Act or the Act) of the Uniform Adult  
8 Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) establishes  
9 mechanisms for sorting out jurisdictional and related issues in what might be called  
10 "adult in need of care" cases (what, under Louisiana domestic law, would be called  
11 cases of "interdiction" or "continuing tutorship") that exhibit contacts with more than  
12 one state. As such, the Louisiana Act forms part of that set of legal meta-rules known  
13 collectively as "the law of conflict of laws." The Act does not, then, form part of that  
14 set of ordinary legal rules known collectively as the "local law" (also called the  
15 "domestic law").

16  
17 Recalling this distinction between the law of conflict of laws and the  
18 domestic law and, further, recognizing that Louisiana's version of the UAGPPJA  
19 falls on the "conflict of laws" side of the dividing line between the two are vital for  
20 a proper understanding not only of what the Act does do, but also of what it does not  
21 do.

22  
23 What the Act most certainly does not do is to create within Louisiana  
24 domestic law a new "third way" of protecting adults in need of care alongside of the  
25 existing "two," that is, interdiction and continuing tutorship. From at least as far back  
26 as 1808, Louisiana domestic law has recognized these two - but only these two -  
27 means of providing such protection. The enactment of this Act does not change this  
28 facet of Louisiana law in the least. Consequently, even after the Act goes into effect,  
29 if someone, suspecting that some adult might be in need of care, were to wish to seek  
30 protection from a Louisiana court for that adult, the concerned person would have  
31 to file, depending on the circumstances, a petition styled either "petition for  
32 interdiction" or "petition for continuing tutorship." There would remain no other  
33 alternatives. It would be entirely out of place - indeed, contrary to law - for the  
34 concerned person to file a petition styled "petition for guardianship" or "petition for  
35 conservatorship." Similarly, even after the Act goes into effect, if a Louisiana court,  
36 upon receiving a petition of this kind, were to conclude that the petition should be  
37 granted (a determination that the court would have to make and could make only by  
38 consulting Louisiana's domestic law of interdiction or continuing tutorship, as the  
39 case might be) and, for that reason, were to order the appointment of someone to  
40 superintend the affairs of the adult in need of care, the court's order would have to  
41 refer to this superintendent as either a "curator" or a "tutor", who would enjoy only  
42 those rights, powers, and other prerogatives that are established for curators or tutors  
43 under Louisiana domestic law. Again, there would remain no other alternatives. It  
44 would be entirely out of place - and, again, contrary to law - for the court to issue an  
45 order appointing a "guardian" or a "conservator" in haec verba.

46  
47 What the Act does do is to create new mechanisms within Louisiana's law of  
48 conflicts of law for sorting out various difficulties that could arise when, because an  
49 adult-in-need-of-care case has contacts with not only Louisiana but also some other  
50 state, it is conceivable that the case might be handled either by a Louisiana court, as  
51 an interdiction or continuing tutorship case, or by a court in this other state, as a  
52 guardianship or conservatorship case. One such difficulty is that of jurisdiction:  
53 which court - that in Louisiana or that in the other state - should handle the matter?

1 Resolution of this kind of difficulty is governed by Part 2 of the Act. If, under the  
 2 rules set out in that Part, it is determined that the Louisiana court has jurisdiction,  
 3 then the case will proceed before that court as either an interdiction or continuing  
 4 tutorship case. Another difficulty is that of the transfer of adult-in-need-of-care cases  
 5 to or from a Louisiana court for reasons of forum non conveniens. After an  
 6 adult-in-need-of-care case has been initiated in some other state (where it was styled  
 7 a "guardianship" or "conservatorship" matter), circumstances might change such that  
 8 the adult's needs will be more adequately and efficiently addressed by a Louisiana  
 9 court and, further, the adult's out-of-state guardian or conservator might, for that  
 10 reason, wish to have the case transferred to the Louisiana court. Resolution of this  
 11 kind of difficulty is governed by Part 3. If, under the rules set out in that Part, it is  
 12 determined that the case should be transferred, then the Louisiana court will assume  
 13 jurisdiction over the case, which, from that point forward, would be handled as (one  
 14 might even say "converted into") either an interdiction or a continuing tutorship case.  
 15 Still another difficulty is that of the recognition in Louisiana of out-of-state  
 16 judgments of guardianship or conservatorship. Resolution of this kind of difficulty  
 17 is governed by Part 4. If, under the rules set out in that Part, the recognition of such  
 18 a judgment is accomplished, then the out-of-state guardian or conservator, who, for  
 19 purposes of actions he might take in Louisiana, will at that point be referred to as a  
 20 curator or a tutor, will enjoy all (but only) the rights, powers, and other prerogatives  
 21 enjoyed by curators or tutors under Louisiana domestic law.  
 22

### PART I. GENERAL PROVISIONS

#### §4251.101. Short title

This Chapter may be cited as the Louisiana Uniform Adult  
 Guardianship and Protective Proceedings Jurisdiction Act.

#### §4251.102. Definitions

##### In this Chapter:

(1) "Adult" means an individual who has attained eighteen years of age  
 or who is an emancipated minor.

(2) "Conservator" means a person appointed by the court to administer  
 the property of an adult, including a person appointed as a curator in a full  
 interdiction; as a curator in a limited interdiction, but only insofar as the  
 curator is given power over the care of some or all of the property of the  
 interdict; or as a tutor in a continuing tutorship.

(3) "Guardian" means a person appointed by the court to make decisions  
 regarding the person of an adult, including a person appointed as a curator in  
 a full interdiction; as a curator in a limited interdiction, provided that, and only  
 insofar as, the curator is given power over the care of some or all aspects of the  
 person of the interdict; or as a tutor in a continuing tutorship.

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



1 "adult" in such a way as to include emancipated minors. The reason for this deviation  
 2 is laid out in the first paragraph of the Official Comment of the UAGPPJA: "The  
 3 definition of 'adult' . . . would exclude an emancipated minor. The Act is not  
 4 designed to supplant local substantive law on guardianship. States whose  
 5 guardianship law treats emancipated minors as adults may wish to modify this  
 6 definition." Louisiana is such a state. See Civ. Code Arts. 389 and 390 (providing  
 7 that emancipated minors are susceptible of full and limited interdiction).  
 8

9 (b) The expressions "protective order" and "protective proceeding," as used  
 10 in the Louisiana UAGPPJA, have only the meanings assigned to them in Paragraphs  
 11 (10) and (11) of this Section, respectively. The only "protection" with which these  
 12 expressions are concerned, then, is this: protecting adults who, as a result of some  
 13 physical or mental problem, are unable to handle some or all of their property. These  
 14 expressions should not be confused with similar expressions found in other  
 15 legislation that is concerned with other forms of protection, for example, protection  
 16 against "domestic violence."  
 17

18 **§4251.103. International application of Part**

19 **A court of this state may treat a foreign country as if it were a state for**  
 20 **the purpose of applying this Part and Parts 2, 3, and 5 of this Chapter.**

21 **§4251.104. Communication between courts**

22 **A. A court of this state may communicate with a court in another state**  
 23 **concerning a proceeding arising under this Act. The court may allow the parties**  
 24 **to participate in the communication. Except as otherwise provided in Subsection**  
 25 **B of this Section, the court shall make a record of the communication. The**  
 26 **record may be limited to the fact that the communication occurred.**

27 **B. Courts may communicate concerning schedules, calendars, court**  
 28 **records, and other administrative matters without making a record.**

29 2016 Louisiana Comment

30 Section 1041.104 of the Louisiana UAGPPJA includes the "optional" part of  
 31 Article 104 of the model UAGPPJA that appears in "brackets." The explanation for  
 32 this is to be found in the third paragraph of the Official Comment, which reads in  
 33 part as follows: "[T]he language is bracketed because of a concern in some states that  
 34 a legislative enactment directing when a court must make a record in a judicial  
 35 proceeding may violate the doctrine on separation of powers." In Louisiana, there is  
 36 no such concern.

37 **§4251.105. Cooperation between courts**

38 **If a court of another state in which a guardianship or protective**  
 39 **proceeding is pending requests assistance under a provision of law similar to**  
 40 **R.S. 13:4251.104, a court of this state has jurisdiction for the limited purpose**  
 41 **of granting the request or making reasonable efforts to comply with the request.**

1 2016 Louisiana Comment

2 The provisions of Article 105 of the model UAGPPJA that detail the various  
3 kinds of assistance that a Louisiana court may render a court of another state upon  
4 the latter's request have not been reproduced in Section 4251.105 of the Louisiana  
5 UAGPPJA. The reason for this is simply that it is self-evident that a Louisiana court  
6 may render to a court of another state any and all of the various kinds of assistance  
7 that are enumerated in Article 105. For that reason there is no need for such a  
8 detailed enumeration.

9  
10 **§4251.106. Taking testimony in another state**

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

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

23 **C. Documentary evidence transmitted from another state to a court of**  
24 **this state by technological means that do not produce an original writing may**  
25 **not be excluded from evidence on an objection based on the best evidence rule.**

26 **PART II. JURISDICTION**

27 **§4251.201. Definitions; significant-connection factors**

28 **A. In this Part:**

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

33 **(2) "Home state" means the state in which the respondent was physically**  
34 **present, including any period of temporary absence, for at least six consecutive**

1 months immediately before the filing of a petition for a protective order or the  
 2 appointment of a guardian; or if none, the state in which the respondent was  
 3 physically present, including any period of temporary absence, for at least six  
 4 consecutive months ending within the six months prior to the filing of the  
 5 petition.

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

10 B. In determining under R.S. 13:4251.203 and R.S. 13:4251.301(E)  
 11 whether a respondent has a significant connection with a particular state, the  
 12 court shall consider:

13 (1) The location of the respondent's family and other persons required  
 14 to be notified of the guardianship or protective proceeding.

15 (2) The length of time the respondent at any time was physically present  
 16 in the state and the duration of any absence.

17 (3) The location of the respondent's property.

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

21 §4251.202. Exclusive basis

22 This Part provides the exclusive jurisdictional basis for a court of this  
 23 state to appoint a guardian or issue a protective order for an adult.

24 2016 Louisiana Comments

25 (a) In conformity with Article 202 of the model UAGPPJA, Section 4251.202  
 26 of the Louisiana UGAPPJA provides the exclusive jurisdictional basis for a  
 27 Louisiana court to "appoint a guardian or issue a protective order for an adult." This  
 28 jurisdictional rule applies as much to purely "in state" cases (cases in which all of the  
 29 incapacitated or protected person's relevant contacts are in Louisiana) as it does to  
 30 "interstate" cases (cases in which the incapacitated or protected person has some  
 31 contacts with Louisiana but other contacts with one or more other states). For that  
 32 reason, pertinent provisions of Article 10 of the Code of Civil Procedure - those that  
 33 grant jurisdiction over status in cases involving interdiction and continuing tutorship  
 34 - have been modified accordingly. The result of these changes is that the jurisdiction  
 35 of Louisiana courts over all cases involving interdiction and continuing tutorship is

1 now governed by the provisions of this Part including the key provision, Section  
 2 4251.203. It is possible - indeed likely - that this change will have the effect of  
 3 expanding the jurisdiction of Louisiana courts over such cases.  
 4

5 (b) This Section is jurisdictional only. It changes neither the domestic  
 6 substantive law nor, except as to jurisdiction, the domestic procedural law of  
 7 Louisiana regarding the protection of adults in need of care. Under that law, there are  
 8 and, notwithstanding the enactment of this Act, will remain two - and only two -  
 9 modes of protecting adults in need of care, namely, curatorship ("interdiction") and  
 10 continuing tutorship. Consequently, in any case over which a Louisiana court asserts  
 11 jurisdiction on the basis of this Section, all documents produced by that court in  
 12 connection with the case, including court orders and written communications, should  
 13 use terms drawn from one or the other of those two domestic legal institutions. For  
 14 example, the parties and the court, in drafting these documents, should designate the  
 15 proceeding as one of "interdiction" (or "curatorship") or "continuing tutorship" (as  
 16 opposed to one of "guardianship" or "conservatorship"), as the case may be; should  
 17 refer to the adult in need of care as an "interdict" or "person with intellectual  
 18 disabilities" (as opposed to an "incapacitated person" or a "protected person"), as the  
 19 case may be; and should refer to the superintendent of that adult as a "curator" or a  
 20 "continuing tutor" (as opposed to a "guardian" or a "conservator"), as the case may  
 21 be. See Louisiana Prefatory Note.  
 22

### 23 §4251.203. Jurisdiction

24 A court of this state has jurisdiction to appoint a guardian or issue a  
 25 protective order for a respondent if any of the following apply:

26 (1) This state is the respondent's home state.

27 (2) On the date the petition is filed, this state is a significant-connection  
 28 state, and:

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

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

35 (i) A petition for an appointment or order is not filed in the respondent's  
 36 home state.

37 (ii) An objection to the court's jurisdiction is not filed by a person  
 38 required to be notified of the proceeding.

39 (iii) The court in this state concludes that it is an appropriate forum  
 40 under the factors set forth in R.S. 13:4251.206.

41 (3) This state does not have jurisdiction under either Paragraph (1) or



1 (2) of this Section, the respondent's home state and all significant-connection  
2 states have declined to exercise jurisdiction because this state is the more  
3 appropriate forum, and jurisdiction in this state is consistent with the  
4 constitutions of this state and the United States.

5 (4) The requirements for special jurisdiction under R.S. 13:4251.204 are  
6 met.

7 §4251.204. Special jurisdiction

8 A. A court of this state lacking jurisdiction under R.S. 13:4251.203(1)  
9 through (3) has special jurisdiction to do any of the following:

10 (1) Appoint a guardian in an emergency for a term not exceeding ninety  
11 days for a respondent who is physically present in this state.

12 (2) Issue a protective order with respect to immovable or corporeal  
13 movable property located in this state.

14 (3) Appoint a guardian or conservator for an incapacitated or protected  
15 person for whom a provisional order to transfer the proceeding from another  
16 state has been issued under procedures similar to R.S. 13:4251.301.

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

22 §4251.205. Exclusive and continuing jurisdiction

23 Except as otherwise provided in R.S. 13:4251.204, a court that has  
24 appointed a guardian or issued a protective order consistent with this Chapter  
25 has exclusive and continuing jurisdiction over the proceeding until it is  
26 terminated by the court or the appointment or order expires by its own terms.

27 2016 Louisiana Comment

28 This Section is concerned exclusively with what might be called "interstate"  
29 disputes regarding continuing jurisdiction in guardianship or conservatorship  
30 matters, that is, cases in which, after a court in some other state has already assumed  
31 jurisdiction over such a matter, a court of this state is petitioned to take some action  
32 with respect to the person to whom that matter pertains or his property. This Section

1 has no application to "intrastate" disputes of this kind, that is, cases in which the  
2 question of which court has jurisdiction involves two different Louisiana courts. To  
3 the contrary, such intrastate disputes are governed by other Louisiana legislation, for  
4 example, in the case of continuing jurisdiction in interdiction matters, by Code of  
5 Civil Procedure Article 4553.

6  
7 **§4251.206. Appropriate forum**

8 **A. A court of this state having jurisdiction under R.S. 13:4251.203 to**  
9 **appoint a guardian or issue a protective order may decline to exercise its**  
10 **jurisdiction if it determines at any time that a court of another state is a more**  
11 **appropriate forum.**

12 **B. If a court of this state declines to exercise its jurisdiction under**  
13 **Subsection A of this Section, it shall either dismiss or stay the proceeding. The**  
14 **court may impose any condition the court considers just and proper, including**  
15 **the condition that a petition for the appointment of a guardian or issuance of a**  
16 **protective order be filed promptly in another state.**

17 **C. In determining whether it is an appropriate forum, the court shall**  
18 **consider all relevant factors, including:**

19 **(1) Any expressed preference of the respondent.**

20 **(2) Whether abuse, neglect, or exploitation of the respondent has**  
21 **occurred or is likely to occur and which state could best protect the respondent**  
22 **from the abuse, neglect, or exploitation.**

23 **(3) The length of time the respondent was physically present in or was**  
24 **a legal resident of this or another state.**

25 **(4) The distance of the respondent from the court in each state.**

26 **(5) The financial circumstances of the respondent's estate.**

27 **(6) The nature and location of the evidence.**

28 **(7) The ability of the court in each state to decide the issue expeditiously**  
29 **and the procedures necessary to present evidence.**

30 **(8) The familiarity of the court of each state with the facts and issues in**  
31 **the proceeding.**

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

1           §4251.207. Jurisdiction declined by reason of conduct

2           A. If at any time a court of this state determines that it acquired  
3           jurisdiction to appoint a guardian or issue a protective order because of  
4           unjustifiable conduct, the court may do any of the following:

5                   (1) Decline to exercise jurisdiction.

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

12                   (3) Continue to exercise jurisdiction after considering:

13                   (a) The extent to which the respondent and all persons required to be  
14           notified of the proceedings have acquiesced in the exercise of the court's  
15           jurisdiction.

16                   (b) Whether it is a more appropriate forum than the court of any other  
17           state under the factors set forth in R.S. 13:4251.206(C).

18                   (c) Whether the court of any other state would have jurisdiction under  
19           factual circumstances in substantial conformity with the jurisdictional  
20           standards of R.S. 13:4251.203.

21           B. If a court of this state determines that it acquired jurisdiction to  
22           appoint a guardian or issue a protective order because a party seeking to invoke  
23           its jurisdiction engaged in unjustifiable conduct, it may assess against that party  
24           necessary and reasonable expenses, including attorney fees, investigative fees,  
25           court costs, communication expenses, witness fees and expenses, and travel  
26           expenses. The court may not assess fees, costs, or expenses of any kind against  
27           this state or a governmental subdivision, agency, or instrumentality of this state  
28           unless authorized by law other than this Chapter.

29           §4251.208. Notice of proceeding

30                   If a petition for the appointment of a guardian or issuance of a protective

1 order is brought in this state and this state was not the respondent's home state  
 2 on the date the petition was filed, in addition to complying with the notice  
 3 requirements of this state, notice of the petition must be given to those persons  
 4 who would be entitled to notice of the petition if a proceeding were brought in  
 5 the respondent's home state. The notice must be given in the same manner as  
 6 notice is required to be given in this state.

7 §4251.209. Proceedings in more than one state

8 Except for a petition for the appointment of a guardian in an emergency  
 9 or issuance of a protective order limited to property located in this state under  
 10 R.S. 13:4251.204(A)(1) or (A)(2), if a petition for the appointment of a guardian  
 11 or issuance of a protective order is filed in this state and in another state and  
 12 neither petition has been dismissed or withdrawn, the following rules apply:

13 (1) If the court in this state has jurisdiction under R.S. 13:4251.203, it  
 14 may proceed with the case unless a court in another state acquires jurisdiction  
 15 under provisions similar to R.S. 13:4251.203 before the appointment or issuance  
 16 of the order.

17 (2) If the court in this state does not have jurisdiction under R.S.  
 18 13:4251.203, whether at the time the petition is filed or at any time before the  
 19 appointment or issuance of the order, the court shall stay the proceeding and  
 20 communicate with the court in the other state. If the court in the other state has  
 21 jurisdiction, the court in this state shall dismiss the petition unless the court in  
 22 the other state determines that the court in this state is a more appropriate  
 23 forum.

24 PART III. TRANSFER OF GUARDIANSHIP

25 OR CONSERVATORSHIP

26 §4251.301. Transfer of guardianship or conservatorship to another state

27 A. A guardian or conservator appointed in this state may petition the  
 28 court to transfer the guardianship or conservatorship to another state.

29 B. Notice of a petition under Subsection A of this Section must be given  
 30 to the persons that would be entitled to notice of a petition in this state for the

1 appointment of a guardian or conservator.

2 C. On the court's own motion or on request of the guardian or  
3 conservator, the incapacitated or protected person, or other person required to  
4 be notified of the petition, the court shall hold a hearing on a petition filed  
5 pursuant to Subsection A of this Section.

6 D. The court shall issue an order provisionally granting a petition to  
7 transfer a guardianship and shall direct the guardian to petition for  
8 guardianship in the other state if the court is satisfied that the guardianship will  
9 be accepted by the court in the other state and the court finds that:

10 (1) The incapacitated person is physically present in or is reasonably  
11 expected to move permanently to the other state.

12 (2) An objection to the transfer has not been made or, if an objection has  
13 been made, the objector has not established that the transfer would be contrary  
14 to the interests of the incapacitated person.

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

17 E. The court shall issue a provisional order granting a petition to  
18 transfer a conservatorship and shall direct the conservator to petition for  
19 conservatorship in the other state if the court is satisfied that the  
20 conservatorship will be accepted by the court of the other state and the court  
21 finds that:

22 (1) The protected person is physically present in or is reasonably  
23 expected to move permanently to the other state, or the protected person has a  
24 significant connection to the other state considering the factors in R.S.  
25 13:4251.201(B).

26 (2) An objection to the transfer has not been made or, if an objection has  
27 been made, the objector has not established that the transfer would be contrary  
28 to the interests of the protected person.

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

1           F. The court shall issue a final order confirming the transfer and  
2 terminating the guardianship or conservatorship upon its receipt of:

3           (1) A provisional order accepting the proceeding from the court to which  
4 the proceeding is to be transferred which is issued under provisions similar to  
5 R.S. 13:4251.302; and

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

8           §4251.302. Accepting guardianship or conservatorship transferred from  
9 another state

10           A. To confirm transfer of a guardianship or conservatorship transferred  
11 to this state under provisions similar to R.S. 13:4251.301, the guardian or  
12 conservator must petition the court in this state to accept the guardianship or  
13 conservatorship. The petition must include a certified copy of the other state's  
14 provisional order of transfer.

15           B. Notice of a petition under Subsection A of this Section must be given  
16 to those persons that would be entitled to notice if the petition were a petition  
17 for the appointment of a guardian or issuance of a protective order in both the  
18 transferring state and this state. The notice must be given in the same manner  
19 as notice is required to be given in this state.

20           C. On the court's own motion or on request of the guardian or  
21 conservator, the incapacitated or protected person, or other person required to  
22 be notified of the proceeding, the court shall hold a hearing on a petition filed  
23 pursuant to Subsection A of this Section.

24           D. The court shall issue an order provisionally granting a petition filed  
25 under Subsection A of this Section unless:

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

29           (2) The guardian or conservator is ineligible for appointment in this  
30 state.



1 in this state", the court should refer to the person so appointed not as "guardian" or  
 2 "conservator", but rather as "curator" or "continuing tutor", as the case may be. As  
 3 is explained in the Louisiana Prefatory Note to the Act and in numerous comments  
 4 to other Sections of the Act, this Act does not change the domestic substantive or  
 5 procedural law of Louisiana regarding the protection of adults in need of care; to be  
 6 more precise, it does not establish any new or additional mode of protecting adults  
 7 in need of care alongside those of curatorship ("interdiction") and continuing  
 8 tutorship. Consequently, any orders issued by a Louisiana court under this Act must  
 9 use terms drawn from one or the other of those two domestic legal institutions.

10  
 11 (d) The expression "modified to conform to the law of this state" as used in  
 12 Subsection F must be understood expansively. The modifications envisioned may be  
 13 as minor as changing the out-of-state order so that it uses Louisiana legal  
 14 terminology, for example, changing the terms of a "limited guardianship" to "limited  
 15 interdiction" or re-naming the former "guardian" as "curator." Likewise possible are  
 16 more substantive modifications, such as changing a limited guardianship or  
 17 conservatorship to a full interdiction (or vice versa) if warranted, or naming a  
 18 different person as the guardian or curator if the person in the out-of-state order does  
 19 not qualify for that office under Louisiana law.

20  
 21 (e) The ninety-day deadline established in Subsection F of this Section is  
 22 intended to serve merely as a "prompt" to encourage interested parties, sooner rather  
 23 than later, to examine the guardianship or conservatorship to determine whether it  
 24 needs to be modified to conform to Louisiana law. The deadline is not intended to  
 25 serve as a "prescriptive period" after which such modifications may no longer be  
 26 made. Once a Louisiana court finally accepts a transfer of a guardianship or  
 27 conservatorship, the court has full discretion to make any modifications necessary  
 28 to bring it into compliance with Louisiana law, just as it would in a local case of  
 29 interdiction or continuing tutorship. This is true whether the problem is discovered  
 30 within the initial ninety-day period or later.

31  
 32 (f) The term "recognize," as used in Subsection G of this Section, has its  
 33 everyday, ordinary meaning, that is, "take cognizance of." It follows that the  
 34 "recognition" of a foreign judgment of guardianship or conservatorship does not  
 35 require any "formal" court action, such as a judgment or even a minute entry.

#### 36 PART IV. REGISTRATION AND RECOGNITION OF ORDERS

##### 37 FROM OTHER STATES

##### 38 §4251.401. Registration of guardianship orders

39  
 40 If a guardian has been appointed in another state and a petition for the  
 41 appointment of a guardian is not pending in this state, the guardian appointed  
 42 in the other state, after giving notice to the appointing court of an intent to  
 43 register, may register the guardianship order in this state by filing certified  
 44 copies of the order and letters of office in the mortgage and conveyance records  
 45 of any appropriate parish of this state.

46 2016 Louisiana Comment

47  
 48 The phrase "appropriate parish of this state" as used in this Section refers to  
 49 the parish (or parishes) where the guardian intends to exercise his authority. For  
 50 example, if the guardianship order is registered to allow the guardian to commit the



1 adult to the care of some medical or nursing facility, the appropriate parish is the  
2 parish where that facility is located.

3  
4 **§4251.402. Registration of protective orders**

5 **If a conservator has been appointed in another state and a petition for**  
6 **a protective order is not pending in this state, the conservator appointed in the**  
7 **other state, after giving notice to the appointing court of an intent to register,**  
8 **may register the protective order in this state by filing certified copies of the**  
9 **order and letters of office and of any bond in the mortgage and conveyance**  
10 **records of any parish in which property belonging to the protected person is**  
11 **located.**

12 **§4251.403. Effect of registration**

13 **A. Upon registration of a guardianship or protective order from another**  
14 **state, except as prohibited under the laws of this state, the guardian or**  
15 **conservator may exercise in this state all powers authorized in the order of**  
16 **appointment, subject to the provisions of Code of Civil Procedure Article 4556,**  
17 **including representing the incapacitated or protected person in actions and**  
18 **proceedings in this state and, if the guardian or conservator is not a resident of**  
19 **this state, subject to any conditions imposed upon nonresident parties.**

20 **B. A court of this state may grant any relief available under this Chapter**  
21 **and other law of this state to enforce a registered order.**

22 **PART V. MISCELLANEOUS PROVISIONS**

23 **§4251.501. Uniformity of application and construction**

24 **In applying and construing this uniform act, consideration must be given**  
25 **to the need to promote uniformity of the law with respect to its subject matter**  
26 **among states that enact it.**

27 **§4251.502. Relation to Electronic Signatures in Global and National Commerce**

28 **Act**

29 **This Chapter modifies, limits, and supersedes the federal Electronic**  
30 **Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et**  
31 **seq., but does not modify, limit, or supersede Section 101(c) of that act, 15**

1 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices  
2 described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

3 §4251.503. [Reserved.]

4 §4251.504. Transitional provision

5 A. This Chapter applies to guardianship and protective proceedings  
6 begun on or after the effective date.

7 B. Parts I, III, and IV of this Chapter and R.S. 13:4251.501 and 4251.502  
8 apply to proceedings begun before the effective date, regardless of whether a  
9 guardianship or protective order has been issued.

10 §4251.505. [Reserved.]

11 Section 2. Code of Civil Procedure Arts. 10(A)(3) and (4) and 4556 are hereby  
12 amended and reenacted to read as follows:

13 Art. 10. Jurisdiction over status

14 A. A court which is otherwise competent under the laws of this state has  
15 jurisdiction of the following actions or proceedings only under the following  
16 conditions:

17 \* \* \*

18 (3) An interdiction proceeding ~~if the person sought to be interdicted is~~  
19 ~~domiciled in this state, or is in this state and has property herein~~ **brought pursuant**  
20 **to the provisions of the Louisiana Uniform Adult Guardianship Protective**  
21 **Proceedings Jurisdiction Act.**

22 (4) A tutorship or curatorship proceeding if the minor, ~~interdict,~~ or absentee,  
23 as the case may be, is domiciled in this state or has property herein.

24 \* \* \*

25 Art. 4556. Ancillary interdiction procedure

26 A. Upon producing proof of his appointment, a conservator ~~of a ward~~  
27 ~~residing outside Louisiana~~ who was appointed by a court outside of Louisiana may  
28 appear in court on behalf of the ward **protected person** without qualifying as a  
29 curator according to the law of Louisiana when no curator has been appointed in this  
30 state. In accordance with the authority set forth in his letters, such a conservator may

1 perform acts affecting the ward's **protected person's** property in Louisiana when  
 2 authorized by the court of the parish in which the property is located. Once so  
 3 authorized, the conservator shall act in the same manner and in accordance with the  
 4 same procedures as a curator appointed by a court in Louisiana. Whenever the action  
 5 of an undercurator would be necessary, the court shall appoint an undercurator ad  
 6 hoc.

7 B. In order to take possession of the ward's **protected person's** property, or  
 8 to remove any of it from the state, a conservator appointed by a court outside  
 9 Louisiana shall file a petition for authority to do so in the court of the parish in which  
 10 any of the property is located. The court shall render a judgment granting the  
 11 authority prayed for if the foreign conservator alleges in the petition that there are  
 12 no Louisiana creditors of the ward **protected person,** or that all such known  
 13 creditors have been paid, and if the foreign conservator attaches to the petition an  
 14 irrevocable power of attorney appointing a resident of this state to receive service of  
 15 process in any action or proceeding brought in Louisiana to enforce a claim against  
 16 the ward **protected person,** or against any of the ward's **protected person's** property  
 17 located in this state.

18 Section 3. The Louisiana State Law Institute is hereby directed to note where  
 19 appropriate in the Louisiana Uniform Adult Guardianship Protective Proceedings  
 20 Jurisdiction Act the uniform commentary and prefatory notes of the Uniform Adult  
 21 Guardianship Protective Proceedings Jurisdiction Act.

22 Section 4. This Act shall become effective on August 1, 2016.

---

PRESIDENT OF THE SENATE

---

SPEAKER OF THE HOUSE OF REPRESENTATIVES

---

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_