January 19, 2011

SENATE BILL No. 74

DIGEST OF SB 74 (Updated January 18, 2011 10:38 am - DI 106)

Citations Affected: IC 29-3; IC 29-3.5.

Synopsis: Guardianships. Specifies the notice requirements following court action on a petition to appoint a temporary guardian. Changes the duration of a temporary guardianship from 60 days to 90 days. Authorizes a parent of a minor or a guardian of a protected person to designate a standby guardian effective upon the death or incapacity of the parent or guardian. Provides that the declaration is effective for 90 days unless the standby guardian files a petition for guardianship, in which case the declaration is effective until the court rules on the petition. Provides that a delegation of parental powers by power of attorney is effective immediately. Enacts the uniform adult guardianship and protective proceedings jurisdiction act. Governs issues concerning original jurisdiction, registration, transfer, and out-of-state enforcement of guardianships and protective orders appointed or issued for adults. Makes conforming changes. (The introduced version of this bill was prepared by the probate code study commission.)

Effective: July 1, 2011.

Zakas, Broden, Head, Randolph

January 5, 2011, read first time and referred to Committee on Judiciary.
January 18, 2011, amended, reported favorably — Do Pass.

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January 19, 2011

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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SENATE BILL No. 74

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 29-3-2-1, AS AMENDED BY P.L.138-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) This article applies to the following:

(1) The business affairs, physical person, and property of every incapacitated person and minor residing in Indiana.

(2) Property located in Indiana of every incapacitated person and minor residing outside Indiana.

(3) Property of every incapacitated person or minor, regardless of where the property is located, coming into the control of a fiduciary who is subject to the laws of Indiana.

(b) Except as provided in subsections (c) through (e), the court has exclusive original jurisdiction **with respect to an individual who is not an adult (as defined in IC 29-3.5-1-2(1))** over all matters concerning the following:

(1) Guardians.

(2) Protective proceedings under IC 29-3-4.

In the case of an adult (as defined in IC 29-3.5-1-2(1)), a court must

establish jurisdiction concerning a guardianship or a protective proceeding in accordance with IC 29-3.5-2.

(c) A juvenile court has exclusive original jurisdiction over matters relating to the following:

(1) Minors described in IC 31-30-1-1.

(2) Matters related to guardians of the person and guardianships of the person described in IC 31-30-1-1(10).

(d) Except as provided in subsection (c), courts with child custody jurisdiction under:

(1) IC 31-14-10;

(2) IC 31-17-2-1; or

(3) IC 31-21-5 (or IC 31-17-3-3 before its repeal);

have original and continuing jurisdiction over custody matters relating to minors.

(e) A mental health division of a superior court under IC 33-33-49 has jurisdiction concurrent with the court in mental health proceedings under IC 12-26 relating to guardianship and protective orders.

(f) Jurisdiction under this section is not dependent on issuance or service of summons.

SECTION 2. IC 29-3-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) The venue for the appointment of a guardian or for protective proceedings is as follows:

(1) If the alleged incapacitated person or minor resides in Indiana, venue is:

(A) in the county where the alleged incapacitated person or minor resides; or

(B) if the proceeding is for the appointment of a temporary guardian of the person for an alleged incapacitated person or minor who is in need of medical care, in the county where a facility is located that is providing or attempting to provide medical care to the alleged incapacitated person or minor.

(2) If the alleged incapacitated person or minor does not reside in Indiana, then venue is in any county where any property of the alleged incapacitated person or minor is located. However, if the proceeding is for the appointment of a temporary guardian of the person for an alleged incapacitated person or minor who is in need of medical care, venue is in the county where the facility providing or attempting to provide medical care is located.

(3) If the alleged incapacitated person is an adult (as defined in IC 29-3.5-1-2(1)), venue is determined under the laws of the state or country having jurisdiction under IC 29-3.5-2. However, if a court in Indiana has jurisdiction under

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IC 29-3.5-2, the rules for determining venue set forth in this section apply.

(b) If proceedings are commenced in more than one (1) county, they shall be stayed except in the county where first commenced until final determination of the proper venue by the court in the county where first commenced. After proper venue has been determined, all proceedings in any county other than the county where jurisdiction has been finally determined to exist shall be dismissed. If the proper venue is finally determined to be in another county, the court shall transmit the original file to the proper county. The proceedings shall be commenced by the filing of a petition with the court, and the proceeding first commenced extends to all of the property of the minor or the incapacitated person unless otherwise ordered by the court.

(c) If it appears to the court at any time that:

(1) the proceeding was commenced in the wrong county;

(2) the residence of the incapacitated person or the minor has been changed to another county;

(3) the proper venue is determined to be otherwise under the Indiana Rules of Trial Procedure; or

(4) it would be in the best interest of the incapacitated person or the minor and the property of the minor or the incapacitated person;

the court may order the proceeding, together with all papers, files, and a certified copy of all orders, transferred to another court in Indiana. That court shall complete the proceeding as if originally commenced in that court. The court may in like manner transfer a guardianship or protective proceeding in Indiana to a court outside Indiana if the other court assumes jurisdiction to complete the proceeding as if originally commenced in that court. Before any transfer is made under this subsection, a hearing pursuant to notice shall be held in the same manner as provided with respect to the appointment of a guardian.

(d) Where a guardian has been appointed by a court that does not have probate jurisdiction, the matter shall be transferred in accordance with the proper venue to a court having probate jurisdiction for qualification of the guardian and for further proceedings in the guardianship.

(e) Nothing in this section shall be construed as a requirement of jurisdiction.

SECTION 3. IC 29-3-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) If:

(1) a guardian has not been appointed for an incapacitated person or minor;

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(2) an emergency exists;

(3) the welfare of the incapacitated person or minor requires immediate action; and

(4) no other person appears to have authority to act in the circumstances;

the court, on petition by any person or on its own motion, may appoint a temporary guardian for the incapacitated person or minor for a specified period not to exceed ~~sixty (60)~~ **ninety (90)** days. No such appointment shall be made except after notice and hearing unless it is alleged and found by the court that immediate and irreparable injury to the person or injury, loss, or damage to the property of the alleged incapacitated person or minor may result before the alleged incapacitated person or minor can be heard in response to the petition. If a temporary guardian is appointed without **advance** notice and the alleged incapacitated person or minor files a petition that the guardianship be terminated or the court order modified, the court shall hear and determine the petition at the earliest possible time.

(b) If:

(1) a petition is filed under this section for the appointment of a temporary guardian; and

(2) each person required to receive notice under IC 29-3-6-1(a) has not:

(A) received a complete copy of the petition and notice required by IC 29-3-6-2 before the court considers and acts on the petition; or

(B) received actual notice of the filing of the petition and specifically waived in writing the necessity for service of the notice required under IC 29-3-6-2 before the court considers and acts on the petition;

the petitioner shall, on the earlier of the date the court enters an order scheduling a hearing on the petition or the date the court enters an order appointing a temporary guardian, serve complete copies of the petition, the court's order, and the notice required by IC 29-3-6-2 on every person entitled to receive notice under IC 29-3-6-1(a) and on each additional person to whom the court directs that notice be given. The requirements of this subsection are in addition to the petitioner's obligations under Rule 65 of the Indiana Rules of Trial Procedure to make a specific showing of the petitioner's efforts to provide advance notice to all interested persons or the reasons why advance notice cannot or should not be given.

~~(b)~~ **(c)** If the court finds that a previously appointed guardian is not

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effectively performing fiduciary duties and that the welfare of the protected person requires immediate action, the court may suspend the authority of the previously appointed guardian and appoint a temporary guardian for the protected person for any period fixed by the court. The authority of the previously appointed guardian is suspended as long as a temporary guardian appointed under this subsection has authority to act.

~~(c)~~ **(d)** A temporary guardian appointed under this section has only the responsibilities and powers that are ordered by the court. The court shall order only the powers that are necessary to prevent immediate and substantial injury or loss to the person or property of the alleged incapacitated person or minor in an appointment made under this section.

~~(d)~~ **(e)** Proceedings under this section are not subject to the provisions of IC 29-3-4.

~~(e)~~ **(f)** A proceeding under this section may be joined with a proceeding under IC 29-3-4 or IC 29-3-5.

SECTION 4. IC 29-3-3-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 7. (a) A parent of a minor or the guardian of a protected person may designate a standby guardian by making a written declaration naming the individual designated to serve as a standby guardian. A declarant may name an alternate to the designated standby guardian if the designated standby guardian is unable to serve, refuses to serve, renounces the appointment, dies, or becomes incapacitated after the death of the declarant.**

(b) A declaration under this section must contain the following information:

(1) The names of the declarant and the designated standby guardian.

(2) The following information concerning each minor child or protected person to be placed in the care and custody of the designated standby guardian:

(A) The person's full name as it appears on the birth certificate or as ordered by a court.

(B) The person's date of birth.

(C) The person's Social Security number, if any.

(c) A declaration executed under this section must be signed by the declarant in the presence of a notary public.

(d) A declaration executed under this section becomes effective upon the death or incapacity (as defined in IC 29-3-1-7.5) of the parent or guardian and terminates ninety (90) days after the

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declaration becomes effective. However, if the designated standby guardian files a petition for a guardianship of the minor or protected person during that ninety (90) day period, the declaration remains in effect until the court rules on the petition.

SECTION 5. IC 29-3-6-1, AS AMENDED BY P.L.143-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) When a petition for appointment of a guardian or for the issuance of a protective order is filed with the court, notice of the petition and the hearing on the petition shall be given by first class postage prepaid mail as follows:

(1) If the petition is for the appointment of a successor guardian, notice shall be given unless the court, for good cause shown, orders that notice is not necessary.

(2) If the petition is for the appointment of a temporary guardian, notice shall be given as required by ~~IC 29-3-3-4(a).~~ **IC 29-3-3-4.**

(3) If the subject of the petition is a minor, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The minor, if at least fourteen (14) years of age, unless the minor has signed the petition.

(B) Any living parent of the minor, unless parental rights have been terminated by a court order.

(C) Any person alleged to have had the principal care and custody of the minor during the sixty (60) days preceding the filing of the petition.

(D) Any other person that the court directs.

(4) If it is alleged that the person is an incapacitated person, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The alleged incapacitated person, the alleged incapacitated person's spouse, and the alleged incapacitated person's adult children, or if none, the alleged incapacitated person's parents.

(B) Any person who is serving as a guardian for, or who has the care and custody of, the alleged incapacitated person.

(C) In case no person other than the incapacitated person is notified under clause (A), at least one (1) of the persons most closely related by blood or marriage to the alleged incapacitated person.

(D) Any person known to the petitioner to be serving as the alleged incapacitated person's attorney-in-fact under a durable

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power of attorney.

(E) Any other person that the court directs.

Notice is not required under this subdivision if the person to be notified waives notice or appears at the hearing on the petition.

(b) Whenever a petition (other than one for the appointment of a guardian or for the issuance of a protective order) is filed with the court, notice of the petition and the hearing on the petition shall be given to the following persons, unless they appear or waive notice:

(1) The guardian.

(2) Any other persons that the court directs, including the following:

(A) Any department, bureau, agency, or political subdivision of the United States or of this state that makes or awards compensation, pension, insurance, or other allowance for the benefit of an alleged incapacitated person.

(B) Any department, bureau, agency, or political subdivision of this state that may be charged with the supervision, control, or custody of an alleged incapacitated person.

SECTION 6. IC 29-3-9-1, AS AMENDED BY P.L.101-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) By a properly executed power of attorney, a parent of a minor or a guardian (other than a temporary guardian) of a protected person may delegate to another person for:

(1) any period during which the care and custody of the minor or protected person is entrusted to an institution furnishing care, custody, education, or training; or

(2) a period not exceeding twelve (12) months;

any powers regarding support, custody, or property of the minor or protected person, except the power to consent to the marriage or adoption of a protected person who is a minor. **A delegation described in this subsection is effective immediately unless otherwise stated in the power of attorney.**

(b) A person having a power of attorney executed under subsection (a) has and shall exercise, for the period during which the power is effective, all other authority of the parent or guardian respecting the support, custody, or property of the minor or protected person except any authority expressly excluded in the written instrument delegating the power. However, the parent or guardian remains responsible for any act or omission of the person having the power of attorney with respect to the affairs, property, and person of the minor or protected person as though the power of attorney had never been executed.

(c) Except as otherwise stated in the power of attorney delegating

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powers under this section, a delegation of powers under this section may be revoked by a written instrument of revocation that:

(1) identifies the power of attorney revoked; and

(2) is signed by the:

(A) parent of a minor; or

(B) guardian of a protected person;

who executed the power of attorney.

SECTION 7. IC 29-3-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) Any person indebted to an incapacitated person or minor, or having possession of property belonging to a minor or incapacitated person, may pay the debt or deliver the property to a foreign guardian appointed by a court of the state in which the incapacitated person or minor resides upon being presented with proof of the foreign guardian's appointment and an affidavit made by the foreign guardian stating the following:

(1) That the foreign guardian does not know of any other guardianship proceeding, relating to the incapacitated person or minor, pending in Indiana.

(2) That the letters of the foreign guardian were duly issued.

(3) In the case of an incapacitated person who is an adult (as defined in IC 29-3.5-1-2(1)), that the foreign guardian does not know of a court in a jurisdiction other than Indiana that has exercised jurisdiction regarding the incapacitated person under a law similar to IC 29-3.5-2.

~~(3)~~ **(4)** That the foreign guardian is entitled to receive the payment or delivery.

(b) If the person to whom the affidavit is presented does not know of any other guardianship proceeding pending in Indiana, payment or delivery in response to the demand and affidavit discharges the debtor or possessor from any further liability.

SECTION 8. IC 29-3-13-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. **(a) This subsection applies to a guardianship of the property of a minor.** If no guardian has been appointed, and no petition in a guardianship proceeding is pending in Indiana, a guardian appointed by a court of another state in which the ~~incapacitated person or~~ minor is domiciled may file, with an Indiana court in a county in which property belonging to the ~~incapacitated person or~~ minor is located, an authenticated copy of the guardian's appointment and a bond that meets the requirements of IC 29-3-7-1 with respect to that part of the property of the ~~incapacitated person or~~ minor that is located in that county. After filing the copy and bond, the foreign guardian may exercise as to the property of the

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~~incapacitated person or~~ minor in that county in Indiana all powers of a guardian in Indiana and may maintain actions and proceedings in Indiana.

(b) In the case of an incapacitated person who is an adult (as defined in IC 29-3.5-1-2(1)), a foreign guardian for that adult may register certified copies of the guardian's letters of office and order of appointment under IC 29-3.5-4.

SECTION 9. IC 29-3-13-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. A foreign guardian submits personally to the jurisdiction of Indiana courts in any proceeding relating to the property for which the guardian is responsible by:

(1) complying with section 2 of this chapter;

(2) receiving payment of money or taking delivery of property belonging to ~~the incapacitated person or~~ **a** minor in Indiana; or

(3) doing any act as a guardian in Indiana that would give Indiana jurisdiction over the guardian as an individual.

SECTION 10. IC 29-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

ARTICLE 3.5. UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

Chapter 1. General Provisions

Sec. 1. This article may be cited as the uniform adult guardianship and protective proceedings jurisdiction act.

Sec. 2. The following definitions apply throughout this article:

(1) "Adult" means either of the following:

(A) An individual who has attained eighteen (18) years of age.

(B) An emancipated minor who has not attained eighteen (18) years of age.

(2) "Conservator" means a guardian (as defined in IC 29-3-1-6).

(3) "Guardian" has the meaning set forth in IC 29-3-1-6.

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

(5) "Guardianship proceeding" means a proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) "Home state" means either of the following:

(A) The state in which the respondent was physically present, including any period of temporary absence, for at

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least six (6) consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian.

(B) In the case of a respondent for whom no state satisfies clause (A), the state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months ending within the six (6) months before the filing of the petition.

(7) "Incapacitated person" has the meaning set forth in IC 29-3-1-7.5 with respect to an adult.

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

(9) "Person" has the meaning set forth in IC 29-3-1-12.

(10) "Protected person" has the meaning set forth in IC 29-3-1-13 with respect to an adult.

(11) "Protective order" refers to an order issued under IC 29-3-4.

(12) "Protective proceeding" has the meaning set forth in IC 29-3-1-14.

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

(14) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

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

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

Sec. 3. A court of this state may treat a foreign country as if it were a state for the purpose of applying this article.

Sec. 4. (a) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Courts may communicate concerning schedules, calendars,

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court records, and other administrative matters without making a record.

Sec. 5. (a) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(1) Hold an evidentiary hearing.

(2) Order a person in that state to produce or give evidence under procedures of that state.

(3) Order that an evaluation or assessment be made of the respondent, or order any appropriate investigation of a person involved in a proceeding.

(4) Forward to the court of this state a certified copy of any of the following:

(A) The transcript or other record of a hearing under subdivision (1) or any other proceeding.

(B) Any evidence otherwise presented under subdivision (2).

(C) Any evaluation or assessment prepared in compliance with the request under subdivision (3).

(5) Issue any other order necessary to assure the appearance of a person necessary to make a determination, including the respondent or the incapacitated or protected person.

(6) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including health information otherwise protected by state or federal law.

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

Sec. 6. (a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of witnesses who are located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means.

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A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce a record simultaneously with the transmission may not be excluded from evidence on an objection based on the means of transmission.

Chapter 2. Jurisdiction

Sec. 1. In determining under section 3 of this chapter and IC 29-3.5-3-1(d) whether a respondent has a significant connection with a particular state, the court shall consider:

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

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

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

(4) the extent to which the respondent has ties to the state such as registering to vote, filing a state or local tax return, registering a vehicle, possessing a driver's license, having social relationships, and receiving services in the state.

Sec. 2. This chapter provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

Sec. 3. A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) this state is the respondent's home state;

(2) on the date the petition is filed, this state is a significant connection state and:

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

(B) the respondent 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:

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

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

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(iii) the court in this state concludes that it is an appropriate forum under the factors set forth in section 6 of this chapter;

(3) this state does not have jurisdiction under either subdivision (1) or (2), the respondent's home state and all significant connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) the requirements for special jurisdiction under section 4 of this chapter are met.

Sec. 4. (a) A court of this state lacking jurisdiction under section 3(1) through 3(3) of this chapter has special jurisdiction to do any of the following:

(1) Appoint a temporary guardian in an emergency as permitted by IC 29-3-3-4 for a term not exceeding ninety (90) days for a respondent who is physically present in this state.

(2) Issue a protective order with respect to real or tangible personal property located in this state.

(3) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to IC 29-3.5-3-1.

(b) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state whether dismissal is requested before or after the emergency appointment.

Sec. 5. Except as otherwise provided in section 4 of this chapter, a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

Sec. 6. (a) A court of this state having jurisdiction under section 3 of this chapter to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a court of this state declines to exercise its jurisdiction under subsection (a), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment

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of a guardian or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(1) any expressed preference of the respondent;

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

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

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

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

(6) the nature and location of the evidence;

(7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) the familiarity of the court of each state with the facts and issues in the proceeding; and

(9) if an appointment were made, the court's ability to monitor the conduct of the guardian.

Sec. 7. (a) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(1) decline to exercise jurisdiction;

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

(3) continue to exercise jurisdiction after considering:

(A) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(B) whether it is a more appropriate forum than the court of any other state under the factors set forth in section 6(c) of this chapter; and

(C) whether the court of any other state would have jurisdiction under factual circumstances in substantial

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conformity with the jurisdictional standards of section 3 of this chapter.

(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this chapter.

Sec. 8. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

Sec. 9. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under section 4(a)(1) or 4(a)(2) of this chapter, if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under section 3 of this chapter, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 3 of this chapter before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under section 3 of this chapter, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

Chapter 3. Transfer of Guardianship or Conservatorship

Sec. 1. (a) A guardian appointed in this state may petition the

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court to transfer the guardianship to another state.

(b) Notice of a petition under subsection (a) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian.

(c) On the court's own motion or on request of the guardian, the protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed under subsection (a).

(d) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) the protected person:

(A) is physically present in the other state;

(B) is reasonably expected to move permanently to the other state; or

(C) has a significant connection to the other state as determined under IC 29-3.5-2-1;

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

(3) plans for care and services for the protected person in the other state are reasonable and sufficient; and

(4) adequate arrangements will be made for management of the protected person's property.

(e) The court shall issue a final order confirming the transfer and terminating the guardianship upon its receipt of:

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 2 of this chapter; and

(2) the documents required to terminate a guardianship in this state.

Sec. 2. (a) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to section 1 of this chapter, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subsection (a) must be given to

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those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed under subsection (a).

(d) The court shall issue an order provisionally granting a petition filed under subsection (a) unless:

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

(2) the guardian or conservator is ineligible for appointment in this state.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 1 of this chapter transferring the proceeding to this state.

(f) Not later than ninety (90) days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(g) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(h) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian in this state under IC 29-3 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

Chapter 4. Registration and Recognition of Order From Other States

Sec. 1. If:

(1) a guardian has been appointed in another state;

(2) a petition for the appointment of a guardian is not pending

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in this state; and

(3) the guardian appointed in the other state gives notice to the appointing court of an intent to register the guardianship order;

the guardian appointed in the other state may register the guardianship order in this state by filing certified copies of the guardian's order and letters of office as a foreign judgment in the court of this state having probate jurisdiction and venue of the registered guardianship.

Sec. 2. If:

(1) a conservator has been appointed in another state;

(2) a petition for a guardianship or protective order is not pending in this state; and

(3) the conservator appointed in the other state gives notice to the appointing court of an intent to register the protective order;

the conservator appointed in the other state may register the protective order in this state by filing as a foreign judgment certified copies of the conservator's order, letters of office, and bond, if any, in the court of this state having probate jurisdiction in any county in which property belonging to the protected person is located.

Sec. 3. (a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(b) A court of this state may grant any relief available under this chapter and other laws of this state to enforce a registered order.

Chapter 5. Miscellaneous Provisions

Sec. 1. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 2. This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. 7003(b).

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Sec. 3. (a) This article applies as follows:

(1) To guardianships and protective orders in existence on July 1, 2011.

(2) To guardianship and protective proceedings begun after June 30, 2011.

(b) In the case of a guardianship or protective proceeding begun in Indiana before July 1, 2011, jurisdiction is established under IC 29-3.

(c) After June 30, 2011, a guardianship appointed or a protective order issued by a court exercising jurisdiction established under subsection (b) may be transferred to another court in accordance with IC 29-3.5-3.

(d) After June 30, 2011, a guardianship or protective proceeding begun in another state before July 1, 2011, may be registered in Indiana in accordance with IC 29-3.5-4.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 74, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 5, line 24, after "the designated standby guardian" insert "**is unable to serve,**".

and when so amended that said bill do pass.

(Reference is to SB 74 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 0.

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