

2016 Regular Session

SENATE BILL NO. 94

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

CIVIL PROCEDURE. Enacts Louisiana Uniform Adult Guardianship Protective Proceedings Jurisdiction Act. (8/1/16)

AN ACT

To amend and reenact Code of Civil Procedure Arts. 10(A)(3) and (4) and 4556 and to enact Chapter 24 of Title 13 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 13:4251.101 through 4251.505, relative to adults in need of care; to provide relative to courts and judicial procedure; to provide relative to jurisdiction and procedures for actions brought pursuant to the Louisiana Uniform Adult Guardianship Protective Proceedings Jurisdiction Act; to provide for ancillary interdiction procedures for protected persons; to provide a short title for the Louisiana Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act; to provide certain definitions, terms, procedures, conditions, requirements and effects; to provide for international application of the Chapter; to provide for communication between Louisiana courts and courts of other states; to provide for cooperation between Louisiana courts and courts of other states; to provide for taking testimony in another state; to provide for exclusive basis; to provide for jurisdiction; to provide for special jurisdiction; to provide for exclusive and continuing jurisdiction; to provide for appropriate forums; to provide for jurisdiction declined by reason of conduct; to provide for notice of proceedings; to provide for

proceedings in more than one state; to provide for transfer of guardianship or conservatorship proceedings to another state; to provide for accepting guardianship or conservatorship proceedings transferred from another state; to provide for registration of guardianship orders; to provide for registration of protective orders; to provide for the effect of the registration of such orders; to provide for uniformity of application and construction; to provide relative to the Electronic Signatures in Global and National Commerce Act; to provide for transitional provision; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

CHAPTER 24. LOUISIANA UNIFORM ADULT

GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

JURISDICTION ACT

LOUISIANA PREFATORY NOTE

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

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

What the Act most certainly does not do is to create within Louisiana domestic law a new "third way" of protecting adults in need of care alongside of the existing "two," that is, interdiction and continuing tutorship. From at least as far back as 1808, Louisiana domestic law has recognized these two - but only these two - means of providing such protection. The enactment of this Act does not change this facet of Louisiana law in the least. Consequently, even after the Act goes into effect, if someone, suspecting that some adult might be in need of care, were to wish to seek protection from a Louisiana court for that adult, the concerned person would have to file, depending on the circumstances, a petition styled either "petition for interdiction" or "petition for continuing tutorship." There would remain no other alternatives. It would be entirely out of place - indeed, contrary to law - for the concerned person to file a petition styled "petition for guardianship" or "petition for

conservatorship." Similarly, even after the Act goes into effect, if a Louisiana court, upon receiving a petition of this kind, were to conclude that the petition should be granted (a determination that the court would have to make and could make only by consulting Louisiana's domestic law of interdiction or continuing tutorship, as the case might be) and, for that reason, were to order the appointment of someone to superintend the affairs of the adult in need of care, the court's order would have to refer to this superintendent as either a "curator" or a "tutor", who would enjoy only those rights, powers, and other prerogatives that are established for curators or tutors under Louisiana domestic law. Again, there would remain no other alternatives. It would be entirely out of place - and, again, contrary to law - for the court to issue an order appointing a "guardian" or a "conservator" in haec verba.

What the Act does do is to create new mechanisms within Louisiana's law of conflicts of law for sorting out various difficulties that could arise when, because an adult-in-need-of-care case has contacts with not only Louisiana but also some other state, it is conceivable that the case might be handled either by a Louisiana court, as an interdiction or continuing tutorship case, or by a court in this other state, as a guardianship or conservatorship case. One such difficulty is that of jurisdiction: which court - that in Louisiana or that in the other state - should handle the matter? Resolution of this kind of difficulty is governed by Part 2 of the Act. If, under the rules set out in that Part, it is determined that the Louisiana court has jurisdiction, then the case will proceed before that court as either an interdiction or continuing tutorship case. Another difficulty is that of the transfer of adult-in-need-of-care cases to or from a Louisiana court for reasons of forum non conveniens. After an adult-in-need-of-care case has been initiated in some other state (where it was styled a "guardianship" or "conservatorship" matter), circumstances might change such that the adult's needs will be more adequately and efficiently addressed by a Louisiana court and, further, the adult's out-of-state guardian or conservator might, for that reason, wish to have the case transferred to the Louisiana court. Resolution of this kind of difficulty is governed by Part 3. If, under the rules set out in that Part, it is determined that the case should be transferred, then the Louisiana court will assume jurisdiction over the case, which, from that point forward, would be handled as (one might even say "converted into") either an interdiction or a continuing tutorship case. Still another difficulty is that of the recognition in Louisiana of out-of-state judgments of guardianship or conservatorship. Resolution of this kind of difficulty is governed by Part 4. If, under the rules set out in that Part, the recognition of such a judgment is accomplished, then the out-of-state guardian or conservator, who, for purposes of actions he might take in Louisiana, will at that point be referred to as a curator or a tutor, will enjoy all (but only) the rights, powers, and other prerogatives enjoyed by curators or tutors under Louisiana domestic law.

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

1 the property of an adult, including a person appointed as a curator in a full
2 interdiction; as a curator in a limited interdiction, but only insofar as the
3 curator is given power over the care of some or all of the property of the
4 interdict; or as a tutor in a continuing tutorship.

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

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

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

13 (6) "Incapacitated person" means an adult for whom a guardian has
14 been appointed.

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

18 (8) "Person", except in the term incapacitated person or protected
19 person, means an individual, corporation, business trust, estate, trust,
20 partnership, limited liability company, association, joint venture, public
21 corporation, government or governmental subdivision, agency or
22 instrumentality, or any other legal or commercial entity.

23 (9) "Protected person" means an adult for whom a protective order has
24 been issued.

25 (10) "Protective order" means an order, issued by a court of another
26 state pursuant to the law of that other state, appointing a conservator or
27 relating to management of an adult's property.

28 (11) "Protective proceeding" means a judicial proceeding in which a
29 protective order is sought or has been issued.

(12) "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.

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

(14) "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.

2016 Louisiana Comments

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

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

§4251.103. International application of Part

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

§4251.104. Communication between courts

A. A court of this state may communicate with a court in another state concerning a proceeding arising under this Act. The court may allow the parties to participate in the communication. Except as otherwise provided in Subsection B of this Section, 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, court

records, and other administrative matters without making a record.

2016 Louisiana Comment

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

§4251.105. Cooperation between courts

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

2016 Louisiana Comment

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

§4251.106. Taking testimony in another state

A. In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is 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. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

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

4 PART II. JURISDICTION

5 §4251.201. Definitions; significant-connection factors

6 A. In this Part:

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

11 (2) "Home state" means the state in which the respondent was physically
12 present, including any period of temporary absence, for at least six consecutive
13 months immediately before the filing of a petition for a protective order or the
14 appointment of a guardian; or if none, the state in which the respondent was
15 physically present, including any period of temporary absence, for at least six
16 consecutive months ending within the six months prior to the filing of the
17 petition.

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

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

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

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

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

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

§4251.202. Exclusive basis

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

2016 Louisiana Comments

(a) In conformity with Article 202 of the model UAGPPJA, Section 4251.202 of the Louisiana UGAPPJA provides the exclusive jurisdictional basis for a Louisiana court to "appoint a guardian or issue a protective order for an adult." This jurisdictional rule applies as much to purely "in state" cases (cases in which all of the incapacitated or protected person's relevant contacts are in Louisiana) as it does to "interstate" cases (cases in which the incapacitated or protected person has some contacts with Louisiana but other contacts with one or more other states). For that reason, pertinent provisions of Article 10 of the Code of Civil Procedure - those that grant jurisdiction over status in cases involving interdiction and continuing tutorship - have been modified accordingly. The result of these changes is that the jurisdiction of Louisiana courts over all cases involving interdiction and continuing tutorship is now governed by the provisions of this Part including the key provision, Section 4251.203. It is possible - indeed likely - that this change will have the effect of expanding the jurisdiction of Louisiana courts over such cases.

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

§4251.203. Jurisdiction

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

(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:

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

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

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

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

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

13 (3) This state does not have jurisdiction under either Paragraph (1) or
14 (2) of this Section, the respondent's home state and all significant-connection
15 states have declined to exercise jurisdiction because this state is the more
16 appropriate forum, and jurisdiction in this state is consistent with the
17 constitutions of this state and the United States.

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

20 §4251.204. Special jurisdiction

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

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

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

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

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, if any, whether dismissal is requested before or after the emergency appointment.

§4251.205. Exclusive and continuing jurisdiction

Except as otherwise provided in R.S. 13:4251.204, 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.

2016 Louisiana Comment

This Section is concerned exclusively with what might be called "interstate" disputes regarding continuing jurisdiction in guardianship or conservatorship matters, that is, cases in which, after a court in some other state has already assumed jurisdiction over such a matter, a court of this state is petitioned to take some action with respect to the person to whom that matter pertains or his property. This Section has no application to "intrastate" disputes of this kind, that is, cases in which the question of which court has jurisdiction involves two different Louisiana courts. To the contrary, such intrastate disputes are governed by other Louisiana legislation, for example, in the case of continuing jurisdiction in interdiction matters, by Code of Civil Procedure Article 4553.

§4251.206. Appropriate forum

A. A court of this state having jurisdiction under R.S. 13:4251.203 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 of this Section, 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 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.

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

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

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

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

8 (6) The nature and location of the evidence.

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

11 (8) The familiarity of the court of each state with the facts and issues in
12 the proceeding.

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

15 §4251.207. Jurisdiction declined by reason of conduct

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

19 (1) Decline to exercise jurisdiction.

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

26 (3) Continue to exercise jurisdiction after considering:

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

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

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

6 **B. If a court of this state determines that it acquired jurisdiction to**
7 **appoint a guardian or issue a protective order because a party seeking to invoke**
8 **its jurisdiction engaged in unjustifiable conduct, it may assess against that party**
9 **necessary and reasonable expenses, including attorney fees, investigative fees,**
10 **court costs, communication expenses, witness fees and expenses, and travel**
11 **expenses. The court may not assess fees, costs, or expenses of any kind against**
12 **this state or a governmental subdivision, agency, or instrumentality of this state**
13 **unless authorized by law other than this Chapter.**

14 **§4251.208. Notice of proceeding**

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

22 **§4251.209. Proceedings in more than one state**

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

28 **(1) If the court in this state has jurisdiction under R.S. 13:4251.203, it**
29 **may proceed with the case unless a court in another state acquires jurisdiction**

1 under provisions similar to R.S. 13:4251.203 before the appointment or issuance
2 of the order.

3 (2) If the court in this state does not have jurisdiction under R.S.
4 13:4251.203, whether at the time the petition is filed or at any time before the
5 appointment or issuance of the order, the court shall stay the proceeding and
6 communicate with the court in the other state. If the court in the other state has
7 jurisdiction, the court in this state shall dismiss the petition unless the court in
8 the other state determines that the court in this state is a more appropriate
9 forum.

10 PART III. TRANSFER OF GUARDIANSHIP

11 OR CONSERVATORSHIP

12 §4251.301. Transfer of guardianship or conservatorship to another state

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

15 B. Notice of a petition under Subsection A of this Section must be given
16 to the persons that would be entitled to notice of a petition in this state for the
17 appointment of a guardian or conservator.

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

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

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

28 (2) An objection to the transfer has not been made or, if an objection has
29 been made, the objector has not established that the transfer would be contrary

1 to the interests of the incapacitated person.

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

4 E. The court shall issue a provisional order granting a petition to
5 transfer a conservatorship and shall direct the conservator to petition for
6 conservatorship in the other state if the court is satisfied that the
7 conservatorship will be accepted by the court of the other state and the court
8 finds that:

9 (1) The protected person is physically present in or is reasonably
10 expected to move permanently to the other state, or the protected person has a
11 significant connection to the other state considering the factors in R.S.
12 13:4251.201(B).

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

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

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

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

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

25 §4251.302. Accepting guardianship or conservatorship transferred from
26 another state

27 A. To confirm transfer of a guardianship or conservatorship transferred
28 to this state under provisions similar to R.S. 13:4251.301, the guardian or
29 conservator must petition the court in this state to accept the guardianship or

1 conservatorship. The petition must include a certified copy of the other state's
2 provisional order of transfer.

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

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

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

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

17 (2) The guardian or conservator is ineligible for appointment in this
18 state.

19 E. The court shall issue a final order accepting the proceeding and
20 appointing the guardian or conservator as guardian or conservator in this state
21 upon its receipt from the court from which the proceeding is being transferred
22 of a final order issued under provisions similar to R.S. 13:4251.301 transferring
23 the proceeding to this state.

24 F. Not later than ninety days after issuance of a final order accepting
25 transfer of a guardianship or conservatorship, the court shall determine
26 whether the guardianship or conservatorship needs to be modified to conform
27 to the law of this state.

28 G. In granting a petition under this Section, the court shall recognize a
29 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 or conservator in this state under Code of Civil Procedure Article 4561, if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

2016 Louisiana Comments

(a) The provisional order contemplated by Subsection D is interlocutory. Because there is no legislation that provides for the appeal of such an order, it is not an "appealable judgment" for purposes of Code of Civil Procedure Article 2083. To obtain review of such an order, a party must apply for supervisory writs in accordance with Code of Civil Procedure Article 2201. By contrast, a judgment denying a petition for such a provisional order, inasmuch as it constitutes a "final judgment," is appealable under Code of Civil Procedure Article 2083.

(b) The determination of whether "the guardian or conservator is ineligible for appointment in this state," as is required by Subsection (D)(2), is governed solely by Louisiana law. Thus, in making that determination, the court must consider, first, whether the guardian or conservator in question, had he been appointed in Louisiana originally, would have been a "curator" of an interdict or a "continuing tutor" of a "person with intellectual disabilities," as those terms are defined in Louisiana law, and, second, whether the guardian or conservator meets the eligibility requirements established by Louisiana law for that office.

(c) In the part of the final order contemplated by Subsection E in which the court purports to "appoint [] the guardian or conservator as guardian or conservator in this state", the court should refer to the person so appointed not as "guardian" or "conservator", but rather as "curator" or "continuing tutor", as the case may be. As is explained in the Louisiana Prefatory Note to the Act and in numerous comments to other Sections of the Act, this Act does not change the domestic substantive or procedural law of Louisiana regarding the protection of adults in need of care; to be more precise, it does not establish any new or additional mode of protecting adults in need of care alongside those of curatorship ("interdiction") and continuing tutorship. Consequently, any orders issued by a Louisiana court under this Act must use terms drawn from one or the other of those two domestic legal institutions.

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

(e) The ninety-day deadline established in Subsection F of this Section is

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

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

PART IV. REGISTRATION AND RECOGNITION OF ORDERS

FROM OTHER STATES

§4251.401. Registration of guardianship orders

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

2016 Louisiana Comment

The phrase "appropriate parish of this state" as used in this Section refers to the parish (or parishes) where the guardian intends to exercise his authority. For example, if the guardianship order is registered to allow the guardian to commit the adult to the care of some medical or nursing facility, the appropriate parish is the parish where that facility is located.

§4251.402. Registration of protective orders

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

§4251.403. Effect of registration

1 A. Upon registration of a guardianship or protective order from another
2 state, except as prohibited under the laws of this state, the guardian or
3 conservator may exercise in this state all powers authorized in the order of
4 appointment, subject to the provisions of Code of Civil Procedure Article 4556,
5 including representing the incapacitated or protected person in actions and
6 proceedings in this state and, if the guardian or conservator is not a resident of
7 this state, subject to any conditions imposed upon nonresident parties.

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

10 PART V. MISCELLANEOUS PROVISIONS

11 §4251.501. Uniformity of application and construction

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

15 §4251.502. Relation to Electronic Signatures in Global and National Commerce

16 Act

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

22 §4251.503. [Reserved.]

23 §4251.504. Transitional provision

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

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

29 §4251.505. [Reserved.]

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

3 Art. 10. Jurisdiction over status

4 A. A court which is otherwise competent under the laws of this state has
5 jurisdiction of the following actions or proceedings only under the following
6 conditions:

7 * * *

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

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

14 * * *

15 Art. 4556. Ancillary interdiction procedure

16 A. Upon producing proof of his appointment, a conservator ~~of a ward~~
17 ~~residing outside Louisiana~~ who was appointed by a court outside of Louisiana may
18 appear in court on behalf of the ward **protected person** without qualifying as a
19 curator according to the law of Louisiana when no curator has been appointed in this
20 state. In accordance with the authority set forth in his letters, such a conservator may
21 perform acts affecting the ~~ward's~~ **protected person's** property in Louisiana when
22 authorized by the court of the parish in which the property is located. Once so
23 authorized, the conservator shall act in the same manner and in accordance with the
24 same procedures as a curator appointed by a court in Louisiana. Whenever the action
25 of an undercurator would be necessary, the court shall appoint an undercurator ad
26 hoc.

27 B. In order to take possession of the ~~ward's~~ **protected person's** property, or
28 to remove any of it from the state, a conservator appointed by a court outside
29 Louisiana shall file a petition for authority to do so in the court of the parish in which

1 any of the property is located. The court shall render a judgment granting the
2 authority prayed for if the foreign conservator alleges in the petition that there are
3 no Louisiana creditors of the ~~ward~~ **protected person**, or that all such known
4 creditors have been paid, and if the foreign conservator attaches to the petition an
5 irrevocable power of attorney appointing a resident of this state to receive service of
6 process in any action or proceeding brought in Louisiana to enforce a claim against
7 the ~~ward~~ **protected person**, or against any of the ~~ward's~~ **protected person's** property
8 located in this state.

9 * * *

10 Section 3. The Louisiana State Law Institute is hereby directed to note where
11 appropriate in the Louisiana Uniform Adult Guardianship Protective Proceedings
12 Jurisdiction Act the uniform commentary and prefatory notes of the Uniform Adult
13 Guardianship Protective Proceedings Jurisdiction Act.

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

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Jerry G. Jones.

DIGEST

SB 94 Reengrossed

2016 Regular Session

Colomb

Proposed law enacts the Louisiana Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Proposed law provides new procedures, largely drawn from a uniform act, for foreign curatorships and guardianships to be recognized and exercised in Louisiana.

Present law provides that a state court has jurisdiction for an interdiction proceeding if the person sought to be interdicted is domiciled in this state, or is in this state and has property herein.

Proposed law provides that a state court has jurisdiction for an interdiction proceeding brought pursuant to the provisions of the proposed law.

Present law provides that a state court has jurisdiction for a tutorship or curatorship proceeding if the minor, interdict, or absentee, is domiciled in or owns property in the state.

Proposed law denies a state court jurisdiction over a tutorship or curatorship proceeding for interdicts who are either domiciled in or own property in the state.

Present law provides for a conservator, who has produced proof of his appointment, of a ward residing outside of the state to appear in court on behalf of the ward without qualifying as a curator in Louisiana when no curator has been appointed in the state. This conservator can perform acts that affect the ward's property in Louisiana when authorized by the court

in the parish where the property is located. If the foreign curator wants to take possession of the ward's property or to remove any of it from the state, then he must file a petition for authority to do so in the court of the parish where the property is located. The court shall render a judgment granting the authority requested if the foreign conservator alleges in the petition that there are no Louisiana creditors of the ward or that all such known creditors have been paid and if the foreign conservator attaches to the petition an irrevocable power of attorney appointing a resident of this state to receive service of process in any action or proceeding brought in Louisiana to enforce a claim against the ward or against any of the ward's property in Louisiana.

Proposed law removes the qualification that the ward reside outside of Louisiana and replaces the term "ward" with the term "protected person".

Effective August 1, 2016.

(Amends C.C.P. Art. 10(A)(3) and (4) and Art. 4556; adds R.S. 13:4251.101-4251.505)