

By: Senator(s) Hopson

To: Judiciary, Division A

SENATE BILL NO. 2240

1 AN ACT TO CREATE THE UNIFORM ADULT GUARDIANSHIP AND
2 PROTECTIVE PROCEEDINGS JURISDICTION ACT; TO DEFINE CERTAIN TERMS;
3 TO PROVIDE FOR THE INTERNATIONAL APPLICATION OF THIS ACT; TO
4 PROVIDE FOR COMMUNICATION AND COOPERATION BETWEEN COURTS; TO
5 PROVIDE FOR TAKING TESTIMONY IN ANOTHER STATE; TO DEFINE CERTAIN
6 TERMS AND SIGNIFICANT CONNECTION FACTORS; TO ADDRESS JURISDICTION
7 MATTERS; TO PROVIDE FOR NOTICE; TO PROVIDE RULES WHEN PROCEEDINGS
8 HAVE BEEN FILED IN MORE THAN ONE STATE; TO PROVIDE FOR THE
9 TRANSFER AND ACCEPTANCE OF A GUARDIANSHIP OR CONSERVATORSHIP TO
10 ANOTHER STATE; TO PROVIDE FOR THE REGISTRATION OF ORDERS FROM
11 OTHER STATES AND THE EFFECT OF SUCH ORDERS; TO PROVIDE FOR
12 UNIFORMITY OF APPLICATION; TO ADDRESS THE RELATION TO THE
13 ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT; TO
14 ADDRESS TRANSITIONAL MATTERS; TO BRING FORWARD SECTIONS 93-13-111,
15 93-13-127 AND 93-13-251, MISSISSIPPI CODE OF 1972, WHICH RELATE TO
16 JURISDICTION IN GUARDIANSHIPS AND CONSERVATORSHIPS FOR PURPOSES OF
17 AMENDMENT; AND FOR RELATED PURPOSES.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

19 **SECTION 1.**

20 **ARTICLE 1**

21 **GENERAL PROVISIONS**

22 **93-14-101. Short title.** This act may be cited as the
23 Uniform Adult Guardianship and Protective Proceedings Jurisdiction
24 Act.

25 **93-14-102. Definitions.** In this act:



26 (1) "Adult" means an individual who has attained
27 eighteen (18) years of age.

28 (2) "Conservator" means a person appointed by the court
29 to administer the property of an adult, including a person
30 appointed under Section 93-13-251 et seq.

31 (3) "Guardian" means a person appointed by the court to
32 make decisions regarding the person of an adult, including a
33 person appointed under Section 93-13-111 and Sections 93-13-121
34 through 93-13-135.

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

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

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

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

45 (8) "Person," except in the term incapacitated person
46 or protected person, means an individual, corporation, business
47 trust, estate, trust, partnership, limited liability company,
48 association, joint venture, public corporation, government or
49 governmental subdivision, agency, or instrumentality, or any other
50 legal or commercial entity.



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

53 (10) "Protective order" means an order appointing a
54 conservator or other order related to management of an adult's
55 property.

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

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

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

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

69 **93-14-103. International application of act.** A court of
70 this state may treat a foreign country as if it were a state for
71 the purpose of applying this article and Articles 2, 3, and 5.

72 **93-14-104. Communication between courts.** (a) A court of
73 this state may communicate with a court in another state
74 concerning a proceeding arising under this act. The court may
75 allow the parties to participate in the communication. Except as



76 otherwise provided in subsection (b), the court shall make a
77 record of the communication. The record may be limited to the
78 fact that the communication occurred.

79 (b) Courts may communicate concerning schedules, calendars,
80 court records, and other administrative matters without making a
81 record.

82 **93-14-105. Cooperation between courts.** (a) In a
83 guardianship or protective proceeding in this state, a court of
84 this state may request the appropriate court of another state to
85 do any of the following:

86 (1) Hold an evidentiary hearing;

87 (2) Order a person in that state to produce evidence or
88 give testimony pursuant to procedures of that state;

89 (3) Order that an evaluation or assessment be made of
90 the respondent;

91 (4) Order any appropriate investigation of a person
92 involved in a proceeding;

93 (5) Forward to the court of this state a certified copy
94 of the transcript or other record of a hearing under paragraph (1)
95 or any other proceeding, any evidence otherwise produced under
96 paragraph (2), and any evaluation or assessment prepared in
97 compliance with an order under paragraph (3) or (4);

98 (6) Issue any order necessary to assure the appearance
99 in the proceeding of a person whose presence is necessary for the



100 court to make a determination, including the respondent or the
101 incapacitated or protected person;

102 (7) Issue an order authorizing the release of medical,
103 financial, criminal, or other relevant information in that state,
104 including protected health information as defined in 45 CFR
105 Section 164.504.

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

111 **93-14-106. Taking testimony in another state.** (a) In a
112 guardianship or protective proceeding, in addition to other
113 procedures that may be available, testimony of a witness who is
114 located in another state may be offered by deposition or other
115 means allowable in this state for testimony taken in another
116 state. The court on its own motion may order that the testimony
117 of a witness be taken in another state and may prescribe the
118 manner in which and the terms upon which the testimony is to be
119 taken.

120 (b) In a guardianship or protective proceeding, a court in
121 this state may permit a witness located in another state to be
122 deposed or to testify by telephone or audiovisual or other
123 electronic means. A court of this state shall cooperate with the



124 court of the other state in designating an appropriate location
125 for the deposition or testimony.

126 (c) Documentary evidence transmitted from another state to a
127 court of this state by technological means that do not produce an
128 original writing may not be excluded from evidence on an objection
129 based on the best evidence rule.

130 **ARTICLE 2**

131 **JURISDICTION**

132 **93-14-201. Definitions; significant connection factors.** (a)

133 In this article:

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

139 (2) "Home state" means the state in which the
140 respondent was physically present, including any period of
141 temporary absence, for at least six (6) consecutive months
142 immediately before the filing of a petition for a protective order
143 or the appointment of a guardian; or if none, the state in which
144 the respondent was physically present, including any period of
145 temporary absence, for at least six (6) consecutive months ending
146 within the six (6) months prior to the filing of the petition.

147 (3) "Significant-connection state" means a state, other
148 than the home state, with which a respondent has a significant



149 connection other than mere physical presence and in which
150 substantial evidence concerning the respondent is available.

151 (b) In determining under Section 93-14-203 and Section
152 93-14-301(e) whether a respondent has a significant connection
153 with a particular state, the court shall consider:

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

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

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

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

164 **93-14-202. Exclusive basis.** This article provides the
165 exclusive jurisdictional basis for a court of this state to
166 appoint a guardian or issue a protective order for an adult.

167 **93-14-203. Jurisdiction.** A court of this state has
168 jurisdiction to appoint a guardian or issue a protective order for
169 a respondent if:

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

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



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

176 (B) The respondent has a home state, a petition
177 for an appointment or order is not pending in a court of that
178 state or another significant-connection state, and, before the
179 court makes the appointment or issues the order:

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

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

185 (iii) The court in this state concludes that
186 it is an appropriate forum under the factors set forth in Section
187 93-14-206;

188 (3) This state does not have jurisdiction under either
189 paragraph (1) or (2), the respondent's home state and all
190 significant-connection states have declined to exercise
191 jurisdiction because this state is the more appropriate forum, and
192 jurisdiction in this state is consistent with the Constitutions of
193 this state and the United States; or

194 (4) The requirements for special jurisdiction under
195 Section 93-14-204 are met.



196 **93-14-204. Special jurisdiction.** (a) A court of this state
197 lacking jurisdiction under Section 93-14-203(1) through (3) has
198 special jurisdiction to do any of the following:

199 (1) Appoint a guardian in an emergency for a term not
200 exceeding ninety (90) days for a respondent who is physically
201 present in this state;

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

204 (3) Appoint a guardian or conservator for an
205 incapacitated or protected person for whom a provisional order to
206 transfer the proceeding from another state has been issued under
207 procedures similar to Section 93-14-301.

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

214 **93-14-205. Exclusive and continuing jurisdiction.** Except as
215 otherwise provided in Section 93-14-204, a court that has
216 appointed a guardian or issued a protective order consistent with
217 this act has exclusive and continuing jurisdiction over the
218 proceeding until it is terminated by the court or the appointment
219 or order expires by its own terms.



220 **93-14-206. Appropriate forum.** (a) A court of this state
221 having jurisdiction under Section 93-14-203 to appoint a guardian
222 or issue a protective order may decline to exercise its
223 jurisdiction if it determines at any time that a court of another
224 state is a more appropriate forum.

225 (b) If a court of this state declines to exercise its
226 jurisdiction under subsection (a), it shall either dismiss or stay
227 the proceeding. The court may impose any condition the court
228 considers just and proper, including the condition that a petition
229 for the appointment of a guardian or issuance of a protective
230 order be filed promptly in another state.

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

233 (1) Any expressed preference of the respondent;

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

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

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

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

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



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

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

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

252 **93-14-207. Jurisdiction declined by reason of conduct.** (a)

253 If at any time a court of this state determines that it acquired
254 jurisdiction to appoint a guardian or issue a protective order
255 because of unjustifiable conduct, the court may:

256 (1) Decline to exercise jurisdiction;

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

264 (3) Continue to exercise jurisdiction after
265 considering:

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



269 (B) Whether it is a more appropriate forum than
270 the court of any other state under the factors set forth in
271 Section 93-14-206(c); and

272 (C) Whether the court of any other state would
273 have jurisdiction under factual circumstances in substantial
274 conformity with the jurisdictional standards of Section 93-14-203.

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

285 **93-14-208. Notice of proceeding.** If a petition for the
286 appointment of a guardian or issuance of a protective order is
287 brought in this state and this state was not the respondent's home
288 state on the date the petition was filed, in addition to complying
289 with the notice requirements of this state, notice of the petition
290 must be given to those persons who would be entitled to notice of
291 the petition if a proceeding were brought in the respondent's home
292 state. The notice must be given in the same manner as notice is
293 required to be given in this state.



318 court to transfer the guardianship or conservatorship to another
319 state.

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

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

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

332 (1) The incapacitated person is physically present in
333 or is reasonably expected to move permanently to the other state;

334 (2) An objection to the transfer has not been made or,
335 if an objection has been made, the objector has not established
336 that the transfer would be contrary to the interests of the
337 incapacitated person; and

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

340 (e) The court shall issue a provisional order granting a
341 petition to transfer a conservatorship and shall direct the
342 conservator to petition for conservatorship in the other state if



343 the court is satisfied that the conservatorship will be accepted
344 by the court of the other state and the court finds that:

345 (1) The protected person is physically present in or is
346 reasonably expected to move permanently to the other state, or the
347 protected person has a significant connection to the other state
348 considering the factors in Section 93-14-201(b);

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

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

355 (f) The court shall issue a final order confirming the
356 transfer and terminating the guardianship or conservatorship upon
357 its receipt of:

358 (1) A provisional order accepting the proceeding from
359 the court to which the proceeding is to be transferred which is
360 issued under provisions similar to Section 93-14-302; and

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

363 **93-14-302. Accepting guardianship or conservatorship**
364 **transferred from another state.** (a) To confirm transfer of a
365 guardianship or conservatorship transferred to this state under
366 provisions similar to Section 93-14-301, the guardian or
367 conservator must petition the court in this state to accept the



368 guardianship or conservatorship. The petition must include a
369 certified copy of the other state's provisional order of transfer.

370 (b) Notice of a petition under subsection (a) must be given
371 to those persons that would be entitled to notice if the petition
372 were a petition for the appointment of a guardian or issuance of a
373 protective order in both the transferring state and this state.
374 The notice must be given in the same manner as notice is required
375 to be given in this state.

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

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

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

385 (2) The guardian or conservator is ineligible for
386 appointment in this state.

387 (e) The court shall issue a final order accepting the
388 proceeding and appointing the guardian or conservator as guardian
389 or conservator in this state upon its receipt from the court from
390 which the proceeding is being transferred of a final order issued
391 under provisions similar to Section 93-14-301 transferring the
392 proceeding to this state.



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

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

403 (h) The denial by a court of this state of a petition to
404 accept a guardianship or conservatorship transferred from another
405 state does not affect the ability of the guardian or conservator
406 to seek appointment as guardian or conservator in this state under
407 Sections 93-13-251 through 93-13-267, Section 93-13-111, Sections
408 93-13-121 through 93-13-135 and Section 35-5-1 et seq. if the
409 court has jurisdiction to make an appointment other than by reason
410 of the provisional order of transfer.

411 **ARTICLE 4**

412 **REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES**

413 **93-14-401. Registration of guardianship orders.** If a
414 guardian has been appointed in another state and a petition for
415 the appointment of a guardian is not pending in this state, the
416 guardian appointed in the other state, after giving notice to the
417 appointing court of an intent to register, may register the



443 **93-14-501. Uniformity of application and construction.** In
444 applying and construing this uniform act, consideration must be
445 given to the need to promote uniformity of the law with respect to
446 its subject matter among states that enact it.

447 **93-14-502. Relation to Electronic Signatures in Global and**
448 **National Commerce Act.** This act modifies, limits, and supersedes
449 the federal Electronic Signatures in Global and National Commerce
450 Act, 15 USCS, Section 7001 et seq., but does not modify, limit, or
451 supersede Section 101(c) of that act, 15 USCS Section 7001(c), or
452 authorize electronic delivery of any of the notices described in
453 Section 103(b) of that act, 15 USCS Section 7003(b).

454 **93-14-503. (Reserved)**

455 **93-14-504. Transitional provision.** (a) This act applies to
456 guardianship and protective proceedings begun on or after July 1,
457 2014.

458 (b) Articles 1, 3 and 4 and Sections 93-14-501 and 93-14-502
459 apply to proceedings begun before July 1, 2014, regardless of
460 whether a guardianship or protective order has been issued.

461 **SECTION 2.** Section 93-13-111, Mississippi Code of 1972, is
462 brought forward as follows:

463 93-13-111. The chancellor may appoint guardians of the
464 person and estate, or either, of persons found to be in need of
465 mental treatment as defined in Section 41-21-61 et seq. and
466 incapable of taking care of his person and property, upon the
467 motion of the chancellor or clerk of the chancery court, or upon



468 the application of relatives or friends of such persons or upon
469 the application of any other interested party. Such proceeding
470 may be instituted by any relative or friend of such person or any
471 other interested party by the filing of a sworn petition in the
472 chancery court of the county of the residence of such person,
473 setting forth that such person is in need of mental treatment and
474 incapable of taking care of his person and estate, or either.
475 Upon the filing of such petition, the chancellor of said court
476 shall, by order, fix the day, time and place for the hearing
477 thereof, either in termtime or in vacation, and the person who is
478 alleged to be in need of mental treatment and incapable of taking
479 care of his person or property shall be summoned to be and appear
480 before said court at the time and place fixed, which said summons
481 shall be served upon such person not less than five (5) days prior
482 to the date fixed for such hearing. At such hearing all
483 interested parties may appear and present evidence as to the truth
484 and correctness of the allegations of the said petition. If the
485 chancellor should find from the evidence that such person is in
486 need of mental treatment and incapable of taking care of his
487 estate and person, or either, the chancellor shall appoint a
488 guardian of such person's estate and person, or either, as the
489 case may be. In such cases, the costs and expenses of the
490 proceedings shall be paid out of the estate of such person if a
491 guardian is appointed. If a guardian is appointed and such person



492 has no estate, or if no guardian is appointed, then such costs and
493 expenses shall be paid by the person instituting the proceedings.

494 **SECTION 3.** Section 93-13-127, Mississippi Code of 1972, is
495 brought forward as follows:

496 93-13-127. The guardians mentioned in Sections 93-13-123 and
497 93-13-125 shall have the powers of and qualify the same as
498 guardians of resident persons of unsound mind, giving bond and
499 taking the oath of office and being governed by the law regulating
500 guardians of resident persons of unsound mind. The chancery court
501 shall have the same powers and jurisdiction in reference to debts
502 due, rights of action, and property as said chancery court has of
503 the property, debts, and rights of action of resident persons of
504 unsound mind.

505 **SECTION 4.** Section 93-13-251, Mississippi Code of 1972, is
506 brought forward as follows:

507 93-13-251. If a person is incapable of managing his own
508 estate by reason of advanced age, physical incapacity or mental
509 weakness, or because the person is missing or outside of the
510 United States and unable to return, the chancery court of the
511 county wherein the person resides or, in the case of a missing or
512 absent person, the chancery court of the county where the person
513 most recently resided, upon the petition of the person or of one
514 or more of his friends or relatives, may appoint a conservator to
515 have charge and management of the property of the person and, if



516 the court deems it advisable, also to have charge and custody of
517 the person subject to the direction of the appointing court.

518 **SECTION 5.** This act shall take effect and be in force from
519 and after July 1, 2014.

