

By Senator Aronberg

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1 A bill to be entitled
2 An act relating to adult guardianship; redesignating
3 part II of ch. 744, F.S., as "Venue and Jurisdiction";
4 creating ss. 744.211, 744.2112, 744.2113, 744.2114,
5 744.2115, 744.2123, 744.2126, 744.2127, and 744.2129,
6 F.S.; providing purposes for and construction of
7 jurisdictional provisions; providing definitions;
8 providing for treatment of foreign countries for
9 specified purposes; providing for communication and
10 cooperation between courts; providing for
11 jurisdiction; providing for determination of whether a
12 court is an appropriate forum; authorizing a court to
13 decline jurisdiction due to certain conduct; providing
14 for assessment of costs and expenses against certain
15 parties engaging in unjustifiable conduct that caused
16 the court to acquire jurisdiction; providing for
17 proceedings in more than one state; providing for
18 applicability of specified provisions; amending s.
19 744.202, F.S.; requiring a court to determine whether
20 it has jurisdiction; amending s. 744.3201, F.S.;
21 requiring that a petition to determine incapacity of a
22 person be executed by an adult; requiring that factual
23 information included in a petition alleging incapacity
24 not include any information that is confidential or
25 for which the alleged incapacitated person maintains a
26 right to privacy; requiring that additional
27 information be provided in such petitions; providing
28 for a court to request additional information;
29 providing a continuing duty of interested persons to

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30 inform the court of certain information; providing an
31 effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

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35 Section 1. The Division of Statutory Revision is directed
36 to redesignate part II of chapter 744, Florida Statutes, as
37 "Venue and Jurisdiction."

38 Section 2. Sections 744.211, 744.2112, 744.2113, 744.2114,
39 744.2115, 744.2123, 744.2126, 744.2127, and 744.2129, Florida
40 Statutes, are created to read:

41 744.211 Purposes; construction.—The general purposes of ss.
42 744.211-744.2129 are to:

43 (1) Avoid jurisdictional competition and conflict with
44 courts of other states in matters of guardianship that have in
45 the past resulted in the relocation of alleged incapacitated
46 persons from state to state with harmful effects on their well-
47 being.

48 (2) Promote cooperation with the courts of other states so
49 that guardianship proceedings are heard by the state that can
50 best decide if a person is incapacitated and in need of the
51 appointment of a guardian.

52 (3) Deter relocations of alleged incapacitated persons to
53 avoid this state from determining if a person is incapacitated
54 and needs a guardian.

55 (4) Promote and expand the exchange of information and
56 other forms of mutual assistance between the courts of this
57 state and those of other states concerned with the same alleged
58 incapacitated person.

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59 744.2112 Definitions.—As used in ss. 744.211-744.2129, the
60 term:

61 (1) "Home state" means the state in which the alleged
62 incapacitated person was domiciled or resided for at least 6
63 consecutive months immediately prior to the filing of a petition
64 to determine incapacity or petition to appoint a guardian for an
65 incapacitated person.

66 (2) "Proceeding" means the initiation of a case by the
67 filing of a petition to determine incapacity or a petition to
68 appoint a guardian for an incapacitated person.

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

74 744.2113 International application.—A court of this state
75 may treat a foreign country as if it were a state for the
76 purpose of applying ss. 744.211-744.2129.

77 744.2114 Communication between courts.—A court of this
78 state may communicate with a court in another state concerning a
79 proceeding arising under ss. 744.211-744.2129. The court shall
80 allow interested persons to participate in the communication.

81 744.2115 Cooperation between courts.—

82 (1) In a proceeding in this state, a court of this state
83 may request the appropriate court of another state to do any of
84 the following:

85 (a) Hold an evidentiary hearing.

86 (b) Order a person in that state to produce evidence or
87 give testimony pursuant to procedures of that state.

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88 (c) Order that an evaluation or assessment be made of the
89 alleged incapacitated person.

90 (d) Order any appropriate investigation of an interested
91 person involved in a proceeding.

92 (e) Forward to the court of this state a certified copy of
93 the transcript or other record of a hearing under paragraph (a)
94 or any other proceeding, any evidence otherwise produced under
95 paragraph (b), and any evaluation or assessment prepared
96 compliance with an order under paragraph (c) or paragraph (d).

97 (f) Issue any order necessary to ensure the appearance in
98 the proceeding of an interested person whose presence is
99 necessary for the court to make a determination.

100 (2) If a court of another state in which a proceeding is
101 pending requests assistance as provided in subsection (1), a
102 court of this state has jurisdiction for the purpose of granting
103 the request or making reasonable efforts to comply with the
104 request.

105 744.2123 Jurisdiction.—A court of this state has
106 jurisdiction to determine incapacity or appoint a guardian for
107 an alleged incapacitated person if:

108 (1) This state is the alleged incapacitated person's home
109 state;

110 (2) On the date the petition is filed, this state is
111 determined to be an appropriate forum and:

112 1. The alleged incapacitated person does not have a home
113 state or a court of the alleged incapacitated person's home
114 state has declined to exercise jurisdiction because this state
115 is a more appropriate forum; or

116 2. The alleged incapacitated person has a home state, a

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117 petition for determination of incapacity or for appointment of a
118 guardian for an incapacitated person is not pending in a court
119 of the home state, an objection to the court's jurisdiction is
120 not filed by an interested person required to be notified of the
121 proceeding, and the court in this state concludes that it is an
122 appropriate forum under s. 744.2126; or

123 (3) This state has jurisdiction under subsection (1) or
124 subsection (2), the alleged incapacitated person's home state
125 has declined jurisdiction because this state is the more
126 appropriate forum, and jurisdiction in this state is consistent
127 with the State Constitution and the Constitution and laws of the
128 United States.

129 744.2126 Appropriate forum.—

130 (1) A court of this state having venue and jurisdiction in
131 a proceeding may decline to exercise its jurisdiction if it
132 determines at any time that a court of another state is a more
133 appropriate forum.

134 (2) If a court of this state declines to exercise its
135 jurisdiction under subsection (1), it shall stay the proceeding.
136 The court shall require that a proceeding be filed in another
137 state within 30 days after entering the stay. If a proceeding is
138 not filed in another state within 30 days, a court of this state
139 shall remove the stay and assume jurisdiction of the proceeding.

140 (3) In determining whether it is an appropriate forum, the
141 court shall consider all relevant factors, including, but not
142 limited to, the following:

143 (a) Any expressed preference of the alleged incapacitated
144 person.

145 (b) Whether abuse, neglect, or exploitation of the alleged

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146 incapacitated person has occurred or is likely to occur and
147 which state could best protect the alleged incapacitated person
148 from the abuse, neglect, or exploitation.

149 (c) The length of time the alleged incapacitated person was
150 physically present in or was a legal resident of this or another
151 state.

152 (d) The state in which the alleged incapacitated person has
153 established a domicile or intended to establish a domicile.

154 (e) The distance of the alleged incapacitated person from
155 the court in each state.

156 (f) The financial circumstances of the alleged
157 incapacitated person's estate.

158 (g) The nature and location of the evidence.

159 744.2127 Jurisdiction declined because of conduct.—

160 (1) If at any time a court of this state determines that it
161 acquired jurisdiction in a proceeding because of unjustifiable
162 conduct, the court may:

163 (a) Decline to exercise jurisdiction;

164 (b) Exercise jurisdiction for the limited purpose of
165 fashioning an appropriate remedy to ensure the health, safety,
166 and welfare of the alleged incapacitated person or the
167 protection of the alleged incapacitated person's property or
168 prevent a repetition of the unjustifiable conduct, including
169 staying the proceeding until a proceeding is filed in a court of
170 another state having jurisdiction; or

171 (c) Continue to exercise jurisdiction after considering:

172 1. The extent to which the alleged incapacitated person and
173 all interested persons have acquiesced in the exercise of the
174 court's jurisdiction;

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175 2. Whether a court of this state is a more appropriate
176 forum than the court of any other state pursuant to the factors
177 set forth in s. 744.2126(3); and

178 3. Whether the court of any other state would have
179 jurisdiction under factual circumstances in substantial
180 conformity with the jurisdictional standards of s. 744.2123.

181 (2) If a court of this state determines that it acquired
182 jurisdiction in a proceeding because an interested person
183 seeking to invoke its jurisdiction engaged in unjustifiable
184 conduct, it may assess against that party necessary and
185 reasonable expenses, including attorney's fees, investigative
186 fees, court costs, communication expenses, witness fees and
187 expenses, and travel expenses. The court may not assess fees,
188 costs, or expenses of any kind against this state or a
189 governmental subdivision, agency, or instrumentality of this
190 state unless authorized by law other than this part.

191 744.2129 Proceedings in more than one state.—Except for a
192 petition for the appointment of an emergency temporary guardian
193 under s. 744.3031, if a proceeding is filed in this state and in
194 another state and neither proceeding is dismissed or withdrawn,
195 the court shall determine which state has priority. A court of
196 this state shall enter any order necessary pursuant to s.
197 744.3031 to protect the alleged incapacitated person pending
198 final determination of the state to assume jurisdiction of the
199 proceeding.

200 Section 3. Sections 744.211, 744.2112, 744.2113, 744.2114,
201 744.2115, 744.2123, 744.2126, 744.2127, and 744.2129, Florida
202 Statutes, as created by this act, apply to proceedings begun on
203 or after October 1, 2010.

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204 Section 4. Subsection (5) is added to section 744.202,
205 Florida Statutes, to read:

206 744.202 Venue; jurisdiction determination.-

207 (5) A court shall also determine if it has jurisdiction
208 pursuant to this part.

209 Section 5. Section 744.3201, Florida Statutes, is amended
210 to read:

211 744.3201 Petition to determine incapacity.-

212 (1) A petition to determine incapacity of a person must ~~may~~
213 be executed by an adult ~~person~~.

214 (2) The petition must be verified and must:

215 (a) State the name, age, and present address of the
216 petitioner and his or her relationship to the alleged
217 incapacitated person.†

218 (b) State the name, age, county of residence, and present
219 address of the alleged incapacitated person.†

220 (c) Specify the primary language spoken by the alleged
221 incapacitated person, if known.†

222 (d) Allege that the petitioner believes the alleged
223 incapacitated person to be incapacitated and specify the factual
224 information on which such belief is based without stating any
225 confidential information or information for which the alleged
226 incapacitated person maintains a right to privacy and the names
227 and addresses of all persons known to the petitioner who have
228 knowledge of such facts through personal observations.†

229 (e) State the name and address of the alleged incapacitated
230 person's attending or family physician, if known.†

231 (f) State which rights enumerated in s. 744.3215 the
232 alleged incapacitated person is incapable of exercising, to the

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233 best of petitioner's knowledge. If the petitioner has
234 insufficient experience to make such judgments, the petition
235 must so state. ~~;~~ ~~and~~

236 (g) State the names, relationships, and addresses of the
237 next of kin of the alleged incapacitated person, so far as are
238 known, specifying the dates of birth of any who are minors.

239 (h) State all addresses at which the alleged incapacitated
240 person has lived for the 6 months prior to the filing of the
241 petition.

242 (i) State whether the petitioner has participated, as a
243 party or witness or in any other capacity, in any other
244 proceeding concerning the alleged incapacitated person being
245 declared incapacitated or seeking the appointment of a guardian
246 and, if so, identify the court, the case number, and the date of
247 any determination.

248 (j) State whether there is any other pending proceeding to
249 determine the capacity of the alleged incapacitated person or
250 seeking the appointment of a guardian for an alleged
251 incapacitated person that could affect the current proceeding,
252 and, if so, identify the court, the case number, and the nature
253 of the proceeding.

254 (3) A copy of any petition for appointment of guardian or
255 emergency temporary guardian, if applicable, shall be filed with
256 the petition to determine incapacity.

257 (4) If the information as to any of the items described in
258 paragraph (2)(i) or paragraph (2)(j) is in the affirmative, the
259 petitioner shall give additional information concerning those
260 items under oath as required by the court. The court may examine
261 the petitioner and interested persons under oath as to details

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262 of the information furnished and other matters pertinent to the
263 court's jurisdiction and the disposition of the case.

264 (5) Each interested person has a continuing duty to inform
265 the court of any proceeding for the determination of capacity of
266 the alleged incapacitated person or seeking the appointment of a
267 guardian for an alleged incapacitated person in this or any
268 other state that could affect the current proceeding.

269 Section 6. This act shall take effect October 1, 2010.