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# SENATE BILL No. 577

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 29-3.5.

**Synopsis:** Uniform adult guardianship and protective proceedings jurisdiction act. Enacts the uniform adult guardianship and protective proceedings jurisdiction act. Governs guardianship issues in cases in which a guardianship is appointed for an adult, including original jurisdiction, registration, transfer, and out-of-state enforcement.

**Effective:** July 1, 2009.

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### Taylor

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January 20, 2009, read first time and referred to Committee on Judiciary.

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First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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## SENATE BILL No. 577



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

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

1 SECTION 1. IC 29-3.5 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
3 2009]:

4 **ARTICLE 3.5. UNIFORM ADULT GUARDIANSHIP AND**  
5 **PROTECTIVE PROCEEDINGS JURISDICTION ACT**

6 **Chapter 1. General Provisions**

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

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

- 10 (1) "Adult" means an individual who has attained eighteen
- 11 (18) years of age.
- 12 (2) "Conservator" means a person appointed by the court to
- 13 administer the property of an adult, including a person or
- 14 guardian appointed under IC 29-3-8 or IC 29-3-8.5.
- 15 (3) "Guardian" means a person appointed by the court to
- 16 make decisions regarding the person of an adult, including a
- 17 person appointed under IC 29-3-8 or IC 29-3-8.5.



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(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 the state in which the respondent was physically present for at least six (6) consecutive months immediately before the filing of a petition for the appointment of a guardian or protective order. A period of temporary absence counts as part of the six (6) month period.

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

(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" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(10) "Protected person" means an adult for whom a protective order has been made.

(11) "Protective order" means an order appointing a conservator or another court order related to management of an adult's property.

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

(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. Determination of whether a respondent has a significant connection with a particular state must include consideration of the following factors:

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

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**(B) The length of time the respondent at any time was physically present in the state and the duration of any absences.**

**(C) The location of the respondent's property.**

**(D) The extent to which the respondent has other ties to the state such as voting registration, filing of state or local tax returns, vehicle registration, driver's license, social relationships, and receipt of services.**

**(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, 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:**

- (1) hold an evidentiary hearing;**
- (2) order a person in that state to produce or give evidence pursuant to 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 the transcript or other record of a hearing under subdivision (1) or any other proceeding, any evidence otherwise presented under subdivision (2), and 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; and**
- (6) issue an order authorizing the release of medical, financial,**

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1 criminal, or other relevant information in that state, including  
2 protected health information (as defined in 45 CFR 164.504).

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

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

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

22 (c) Documentary evidence transmitted from another state to a  
23 court of this state by technological means that do not produce an  
24 original writing may not be excluded from evidence on an  
25 objection based on the means of transmission.

26 Chapter 2. Jurisdiction

27 Sec. 1. (a) In this chapter:

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

33 (2) "Home state" means the state in which the respondent was  
34 physically present, including any period of temporary  
35 absence, for at least six (6) consecutive months immediately  
36 before the filing of a petition for a protective order or the  
37 appointment of a guardian; or if none, the state in which the  
38 respondent was physically present, including any period of  
39 temporary absence, for at least six (6) consecutive months  
40 ending within the six (6) months before the filing of the  
41 petition.

42 (3) "Significant connection state" means a state, other than

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1           the home state, with which a respondent has a significant  
2           connection other than mere physical presence and in which  
3           substantial evidence concerning the respondent is available.  
4           (b) In determining under section 3 of this chapter and  
5           IC 29-3.5-3-1(e) whether a respondent has a significant connection  
6           with a particular state, the court shall consider:  
7           (1) the location of the respondent's family and other persons  
8           required to be notified of the guardianship or protective  
9           proceeding;  
10          (2) the length of time the respondent at any time was  
11          physically present in the state and the duration of any  
12          absence;  
13          (3) the location of the respondent's property; and  
14          (4) the extent to which the respondent has ties to the state such  
15          as voting registration, state or local tax return filing, vehicle  
16          registration, driver's license, social relationship, and receipt  
17          of services.  
18          Sec. 2. This chapter provides the exclusive jurisdictional basis  
19          for a court of this state to appoint a guardian or issue a protective  
20          order for an adult.  
21          Sec. 3. A court of this state has jurisdiction to appoint a  
22          guardian or issue a protective order for a respondent if:  
23          (1) this state is the respondent's home state;  
24          (2) on the date the petition is filed, this state is a significant  
25          connection state and:  
26                  (A) the respondent does not have a home state or a court of  
27                  the respondent's home state has declined to exercise  
28                  jurisdiction because this state is a more appropriate  
29                  forum; or  
30                  (B) the respondent has a home state, a petition for an  
31                  appointment or order is not pending in a court of that state  
32                  or another significant connection state, and, before the  
33                  court makes the appointment or issues the order:  
34                          (i) a petition for an appointment or order is not filed in  
35                          the respondent's home state;  
36                          (ii) an objection to the court's jurisdiction is not filed by  
37                          a person required to be notified of the proceeding; and  
38                          (iii) the court in this state concludes that it is an  
39                          appropriate forum under the factors set forth in section  
40                          6 of this chapter;  
41          (3) this state does not have jurisdiction under either  
42          subdivision (1) or (2), the respondent's home state and all

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1 significant connection states have declined to exercise  
 2 jurisdiction because this state is the more appropriate forum,  
 3 and jurisdiction in this state is consistent with the  
 4 constitutions of this state and the United States; or  
 5 (4) the requirements for special jurisdiction under section 4 of  
 6 this chapter are met.

7 **Sec. 4. (a)** A court of this state lacking jurisdiction under section  
 8 3(1) through 3(3) of this chapter has special jurisdiction to do any  
 9 of the following:

10 (1) Appoint a guardian in an emergency for a term not  
 11 exceeding ninety (90) days for a respondent who is physically  
 12 present in this state.

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

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

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

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

30 **Sec. 6. (a)** A court of this state having jurisdiction under section  
 31 3 of this chapter to appoint a guardian or issue a protective order  
 32 may decline to exercise its jurisdiction if it determines at any time  
 33 that a court of another state is a more appropriate forum.

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

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

42 (1) any expressed preference of the respondent;

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- 1 (2) whether abuse, neglect, or exploitation of the respondent
- 2 has occurred or is likely to occur and which state could best
- 3 protect the respondent from the abuse, neglect, or
- 4 exploitation;
- 5 (3) the length of time the respondent was physically present in
- 6 or was a legal resident of this or another state;
- 7 (4) the distance of the respondent from the court in each state;
- 8 (5) the financial circumstances of the respondent's estate;
- 9 (6) the nature and location of the evidence;
- 10 (7) the ability of the court in each state to decide the issue
- 11 expeditiously and the procedures necessary to present
- 12 evidence;
- 13 (8) the familiarity of the court of each state with the facts and
- 14 issues in the proceeding; and
- 15 (9) if an appointment were made, the court's ability to
- 16 monitor the conduct of the guardian or conservator.

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

- 20 (1) decline to exercise jurisdiction;
- 21 (2) exercise jurisdiction for the limited purpose of fashioning
- 22 an appropriate remedy to ensure the health, safety, and
- 23 welfare of the respondent or the protection of the
- 24 respondent's property or prevent a repetition of the
- 25 unjustifiable conduct, including staying the proceeding until
- 26 a petition for the appointment of a guardian or issuance of a
- 27 protective order is filed in a court of another state having
- 28 jurisdiction; or
- 29 (3) continue to exercise jurisdiction after considering:
  - 30 (A) the extent to which the respondent and all persons
  - 31 required to be notified of the proceedings have acquiesced
  - 32 in the exercise of the court's jurisdiction;
  - 33 (B) whether it is a more appropriate forum than the court
  - 34 of any other state under the factors set forth in section 6(c)
  - 35 of this chapter; and
  - 36 (C) whether the court of any other state would have
  - 37 jurisdiction under factual circumstances in substantial
  - 38 conformity with the jurisdictional standards of section 3 of
  - 39 this chapter.

40 (b) If a court of this state determines that it acquired  
 41 jurisdiction to appoint a guardian or issue a protective order  
 42 because a party seeking to invoke its jurisdiction engaged in

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1 unjustifiable conduct, it may assess against that party necessary  
2 and reasonable expenses, including attorney's fees, investigative  
3 fees, court costs, communication expenses, witness fees and  
4 expenses, and travel expenses. The court may not assess fees, costs,  
5 or expenses of any kind against this state or a governmental  
6 subdivision, agency, or instrumentality of this state unless  
7 authorized by law other than this chapter.

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

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

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

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

36 **Chapter 3. Transfer of Guardianship or Conservatorship**

37 Sec. 1. (a) A guardian or conservator appointed in this state may  
38 petition the court to transfer the guardianship or conservatorship  
39 to another state.

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

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

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

- 10 (1) the incapacitated person is physically present in or is
- 11 reasonably expected to move permanently to the other state;
- 12 (2) an objection to the transfer has not been made or, if an
- 13 objection has been made, the objector has not established that
- 14 the transfer would be contrary to the interests of the
- 15 incapacitated person; and
- 16 (3) plans for care and services for the incapacitated person in
- 17 the other state are reasonable and sufficient.

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

- 23 (1) the protected person is physically present in or is
- 24 reasonably expected to move permanently to the other state,
- 25 or the protected person has a significant connection to the
- 26 other state considering the factors in IC 29-3.5-2-1(b);
- 27 (2) an objection to the transfer has not been made or, if an
- 28 objection has been made, the objector has not established that
- 29 the transfer would be contrary to the interests of the
- 30 protected person; and
- 31 (3) adequate arrangements will be made for management of
- 32 the protected person's property.

33 (f) The court shall issue a final order confirming the transfer  
34 and terminating the guardianship or conservatorship upon its  
35 receipt of:

- 36 (1) a provisional order accepting the proceeding from the
- 37 court to which the proceeding is to be transferred which is
- 38 issued under provisions similar to section 2 of this chapter;
- 39 and
- 40 (2) the documents required to terminate a guardianship or
- 41 conservatorship in this state.

42 **Sec. 2. (a) To confirm transfer of a guardianship or**

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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 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 or conservator in this state under IC 29-3 if the court has jurisdiction to make an appointment other than by

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reason of the provisional order of transfer.

**Chapter 4. Registration and Recognition of Order From Other States**

**Sec. 1.** 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 as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

**Sec. 2.** 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 as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

**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 law 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).

**Sec. 3. (a)** This article applies to guardianship and protective proceedings begun after June 30, 2009.

**(b)** IC 29-3.5-1, IC 29-3.5-3, IC 29-3.5-4, and sections 1 and 2 of this chapter apply to proceedings begun before July 1, 2009,

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1     **regardless of whether a guardianship or protective order has been**  
2     **issued.**

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