



LOUISIANA STATE LAW INSTITUTE

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February 29, 2016

Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

Representative Taylor Barras
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

RE: SCR 36 of 2012

Dear Mr. President and Mr. Speaker:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature in response to 2012 Senate Concurrent Resolution No. 36, relative to Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA).

Sincerely,

A handwritten signature in black ink that reads "William E. Crawford".

William E. Crawford
Director

WEC/puc

Enclosure

cc: Senator Yvonne Dorsey-Colomb

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.us
Secretary of State, Mr. Tom Schedler
admin@sos.louisiana.gov

LOUISIANA STATE LAW INSTITUTE

**REPORT TO THE LOUISIANA LEGISLATURE
UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS
JURISDICTION ACT (UAGPPJA)**

**RESPONSE TO SENATE CONCURRENT RESOLUTION NO. 36
OF THE 2012 REGULAR SESSION**

**Prepared for the Legislature on
February 29, 2016
Baton Rouge, Louisiana**

**LOUISIANA STATE LAW INSTITUTE
ADULT GUARDIANSHIP COMMITTEE**

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**REPORT TO THE LEGISLATURE ON SCR NO. 36 OF THE 2012 REGULAR SESSION
RELATIVE TO THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE
PROCEEDINGS JURISDICTION ACT (UAGPPJA)**

During the 2012 Regular Legislative Session the Louisiana Legislature passed Senate Concurrent Resolution No. 36. In the resolution, the legislature requested that the Louisiana State Law Institute study the “inclusion of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) in Louisiana Law.” Specifically, the resolution asked the Law Institute to provide specific recommendations for including the UAGPPJA in Louisiana law.

Due to the subject matter of the resolution, the Law Institute created a new committee, the Adult Guardianship Committee, to study this resolution. The Committee was headed by the Reporter, Louisiana State University, Paul M. Hebert Law Center Professor J. Randali Trahan, Louis B. Porterie Professor of Law and Saul Litvinoff Distinguished Professor of Law. The Committee included fourteen members from the bench and bar who have decades of relevant legal experience.

After receiving the resolution, the Committee spent considerable time and effort studying the “UAGPPJA” and attempting to fit the uniform law within the body of Louisiana law. The draft legislation that resulted from this effort was approved by the Council of the Law Institute during its February 12, 2016 meeting. A copy of the proposed legislation is appended to this report.

Respectfully submitted,

William E. Crawford, Director
Louisiana State Law Institute

SENATE CONCURRENT RESOLUTION NO. 36

BY SENATOR DORSEY-COLOMB

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study inclusion of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) in Louisiana law.

WHEREAS, Louisiana should provide the highest quality in services, personal care and protection, and legal assistance for our state's senior citizens, those who are physically and mentally disabled, and others under guardianship; and

WHEREAS, many of these persons need the services of a tutor, guardian or conservator to be able to handle their personal and legal affairs; and

WHEREAS, with a population that is both aging and mobile, there is a demonstrated need for assistance for this population in transferring or recognizing an existing guardianship or conservatorship across state lines; and

WHEREAS, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) was drafted and approved in 2007 by the National Conference of Commissioners for Uniform State Laws, specifically to address jurisdictional, transfer and enforcement issues relating to adult guardianships and protective proceedings; and

WHEREAS, the UAGPPJA is designed to help resolve jurisdictional disputes, transfer guardianship cases between states, and provide recognition and enforcement of guardianship or protective orders across state lines by facilitating communication and cooperation between courts of different jurisdictions concerning guardianship or protective proceedings; and

WHEREAS, the UAGPPJA has been endorsed by Louisiana's Elder Law Task Force, the American Bar Association, the National Academy of Elder Law Attorneys, the National College of Probate Judges, the Conferences of Chief Justices and State Court Administrators, the National Guardianship Association and the Alzheimer's Association; and

WHEREAS, UAGPPJA legislation is pending this year in Hawaii, Maine, Massachusetts, Mississippi, Ohio and Pennsylvania, and being studied in California, Michigan, New York, and Georgia; and

WHEREAS, Louisiana presently provides for its guardianship procedure through its interdiction and tutorship articles and statutes, which are currently scattered throughout the Louisiana Civil Code, the Louisiana Code of Civil Procedure, and the Louisiana Revised Statutes of 1950; and

WHEREAS, the purpose of an act such as the UAGPPJA is to provide uniformity of terminology and structure so that a person's guardianship and protective proceedings may be recognized and transferred as near-seamlessly as possible across state lines, while respecting the existing structure of Louisiana's current articles addressing interdiction or guardianship.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study and develop recommendations regarding inclusion of the UAGPPJA in Louisiana law.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall report its recommendations to the Legislature of Louisiana on or before January 1, 2014.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

Regular Session, 2016

SENATE BILL NO.

BY SENATOR

(On Recommendation of the Louisiana State Law Institute)

ADULT GUARDIANSHIP: Provides legal procedures for protecting adults in need of care

1 AN ACT

2 To amend and reenact Code of Civil Procedure Arts. 10(A)(3) and (4) and 4556 and to
3 enact Chapter 24 of Title 13 of the Louisiana Revised Statutes of 1950, to be
4 comprised of Part I, R.S. 13:4251.101 through 4251.106, Part II, R.S.
5 13:4251.201 through 4251.209, Part III, R.S. 13:4251.301 and 4251.302, Part IV,
6 R.S. 13:4251.401 through 4251.403, and Part V, R.S. 13:4251.501 through
7 4251.505; relative to jurisdiction and procedures for actions brought pursuant to
8 the Louisiana Uniform Adult Guardianship Protective Proceedings Jurisdiction
9 Act; to provide for ancillary interdiction procedures for protected persons; to
10 provide a short title for the Louisiana Uniform Adult Guardianship and Protective
11 Proceedings Jurisdiction Act; to provide definitions for terms used in the Chapter;
12 to provide for international application of the Chapter; to provide for
13 communication between Louisiana courts and courts of other states; to provide for

1 cooperation between Louisiana courts and courts of other states; to provide for
2 taking testimony in another state; to provide for additional definitions used in the
3 Chapter significant connection factors; to provide for exclusive basis; to provide
4 for jurisdiction; to provide for special jurisdiction; to provide for exclusive and
5 continuing jurisdiction; to provide for appropriate forums; to provide for
6 jurisdiction declined by reason of conduct; to provide for notice of proceedings; to
7 provide for proceedings in more than one state; to provide for transfer of
8 guardianship or conservatorship proceedings to another state; to provide for
9 accepting guardianship or conservatorship proceedings transferred from another
10 state; to provide for registration of guardianship orders; to provide for registration
11 of protective orders; to provide for the effect of the registration of such orders; to
12 provide for uniformity of application and construction; to provide for the
13 Electronic Signatures in Global and National Commerce Act; to provide for
14 transitional provision; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. Chapter 24 of Title 13 of the Louisiana Revised Statutes of
17 1950, to be comprised of Part I, R.S. 13:4251.101 through 4251.106, Part II, R.S.
18 13:4251.201 through 4251.209, Part III, R.S. 13:4251.301 and 4251.302, Part IV,
19 R.S. 13:4251.401 through 4251.403, and Part V, R.S. 13:4251.501 through
20 4251.505 is hereby enacted to read as follows:

21 **CHAPTER 24. LOUISIANA UNIFORM ADULT**

22 **GUARDIANSHIP AND PROTECTIVE PROCEEDINGS**

23 **JURISDICTION ACT**

Page 2 of 27

CODING: Words in ~~struck through~~ type are deletions from existing law;
words in **boldface type and underscored** are additions.

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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

1 also some other state, it is conceivable that the case might be handled either by a
2 Louisiana court, as an interdiction or continuing tutorship case, or by a court in
3 this other state, as a guardianship or conservatorship case. One such difficulty is
4 that of jurisdiction: which court – that in Louisiana or that in the other state –
5 should handle the matter? Resolution of this kind of difficulty is governed by Part
6 2 of the Act. If, under the rules set out in that Part, it is determined that the
7 Louisiana court has jurisdiction, then the case will proceed before that court as
8 either an interdiction or continuing tutorship case. Another difficulty is that of the
9 transfer of adult-in-need-of-care cases to or from a Louisiana court for reasons of
10 *forum non conveniens*. After an adult-in-need-of-care case has been initiated in
11 some other state (where it was styled a “guardianship” or “conservatorship”
12 matter), circumstances might change such that the adult’s needs will be more
13 adequately and efficiently addressed by a Louisiana court and, further, the adult’s
14 out-of-state guardian or conservator might, for that reason, wish to have the case
15 transferred to the Louisiana court. Resolution of this kind of difficulty is governed
16 by Part 3. If, under the rules set out in that Part, it is determined that the case
17 should be transferred, then the Louisiana court will assume jurisdiction over the
18 case, which, from that point forward, would be handled as (one might even say
19 “converted into”) either an interdiction or a continuing tutorship case. Still
20 another difficulty is that of the recognition in Louisiana of out-of-state judgments
21 of guardianship or conservatorship. Resolution of this kind of difficulty is
22 governed by Part 4. If, under the rules set out in that Part, the recognition of such
23 a judgment is accomplished, then the out-of-state guardian or conservator, who,
24 for purposes of actions he might take in Louisiana, will at that point be referred to
25 as a curator or a tutor, will enjoy all (but only) the rights, powers, and other
26 prerogatives enjoyed by curators or tutors under Louisiana domestic law.

27 PART I. GENERAL PROVISIONS

28 § 4251.101. Short title

29 This Chapter may be cited as the Louisiana Uniform Adult
30 Guardianship and Protective Proceedings Jurisdiction Act.

31 § 4251.102. Definitions

32 In this Chapter:

33 (1) “Adult” means an individual who has attained 18 years of age or
34 who is an emancipated minor.

35 (2) “Conservator” means a person appointed by the court to

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

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

11 (4) “Guardianship order” means an order appointing a guardian.

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

14 (6) “Incapacitated person” means an adult for whom a guardian has
15 been appointed.

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

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

1 Paragraphs (10) and (11) of this Section, respectively. The only “protection” with
2 which these expressions are concerned, then, is this: protecting adults who, as a
3 result of some physical or mental problem, are unable to handle some or all of
4 their property. These expressions should not be confused with similar expressions
5 found in other legislation that is concerned with other forms of protection, for
6 example, protection against “domestic violence.”

7 **§ 4251.103. International application of Part**

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

10 **§ 4251.104. Communication between courts**

11 **A. A court of this state may communicate with a court in another state**
12 **concerning a proceeding arising under this Chapter. The court may allow the**
13 **parties to participate in the communication. Except as otherwise provided in**
14 **Subsection B, the court shall make a record of the communication. The**
15 **record may be limited to the fact that the communication occurred.**

16 **B. Courts may communicate concerning schedules, calendars, court**
17 **records, and other administrative matters without making a record.**

18 2016 Louisiana Comment

19 Section 4251.104 of the Louisiana UAGPPJA includes the “optional” part
20 of Article 104 of the model UAGPPJA. The explanation for this is to be found in
21 the third paragraph of the Official Comment to the UAGPPJA, which reads in part
22 as follows: “[T]he language is bracketed because of a concern in some states that
23 a legislative enactment directing when a court must make a record in a judicial
24 proceeding may violate the doctrine on separation of powers.” In Louisiana, there
25 is no such concern.

26 **§ 4251.105. Cooperation between courts**

27 **If a court of another state in which a guardianship or protective**
28 **proceeding is pending requests assistance under a provision of law similar to**

1 R.S. 13:4251.104, a court of this state has jurisdiction for the limited purpose
2 of granting the request or making reasonable efforts to comply with the
3 request.

4 2016 Louisiana Comment

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

12 § 4251.106. Taking testimony in another state

13 A. In a guardianship or protective proceeding, in addition to other
14 procedures that may be available, testimony of a witness who is located in
15 another state may be offered by deposition or other means allowable in this
16 state for testimony taken in another state. The court on its own motion may
17 order that the testimony of a witness be taken in another state and may
18 prescribe the manner in which and the terms upon which the testimony is to
19 be taken.

20 B. In a guardianship or protective proceeding, a court in this state
21 may permit a witness located in another state to be deposed or to testify by
22 telephone or audiovisual or other electronic means. A court of this state shall
23 cooperate with the court of the other state in designating an appropriate
24 location for the deposition or testimony.

25 C. Documentary evidence transmitted from another state to a court of
26 this state by technological means that do not produce an original writing may

1 not be excluded from evidence on an objection based on the best evidence
2 rule.

3 **PART II. JURISDICTION**

4 **§ 4251.201. Definitions; significant-connection factors**

5 **A. In this Part:**

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

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

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

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

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

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

5 (3) The location of the respondent’s property.

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

9 § 4251.202. Exclusive basis

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

12 2016 Louisiana Comments

13 (a) In conformity with Article 202 of the model UAGPPJA, Section
14 4251.202 of the Louisiana UGAPPJA provides the exclusive jurisdictional basis
15 for a Louisiana court to “appoint a guardian or issue a protective order for an
16 adult.” This jurisdictional rule applies as much to purely “in state” cases (cases in
17 which all of the incapacitated or protected person’s relevant contacts are in
18 Louisiana) as it does to “interstate” cases (cases in which the incapacitated or
19 protected person has some contacts with Louisiana but other contacts with one or
20 more other states). For that reason, pertinent provisions of Article 10 of the Code
21 of Civil Procedure – those that grant jurisdiction over status in cases involving
22 interdiction and continuing tutorship – have been modified accordingly. The
23 result of these changes is that the jurisdiction of Louisiana courts over all cases
24 involving interdiction and continuing tutorship is now governed by the provisions
25 of this Part including the key provision, Section 4251.203. It is possible – indeed
26 likely – that this change will have the effect of expanding the jurisdiction of
27 Louisiana courts over such cases.

28 (b) This Section is jurisdictional only. It changes neither the domestic
29 substantive law nor, except as to jurisdiction, the domestic procedural law of
30 Louisiana regarding the protection of adults in need of care. Under that law, there
31 are and, notwithstanding the enactment of this Act, will remain two - and only
32 two - modes of protecting adults in need of care, namely, curatorship
33 (“interdiction”) and continuing tutorship. Consequently, in any case over which a

1 Louisiana court asserts jurisdiction on the basis of this Section, all documents
2 produced by that court in connection with the case, including court orders and
3 written communications, should use terms drawn from one or the other of those
4 two domestic legal institutions. For example, the parties and the court, in drafting
5 these documents, should designate the proceeding as one of “interdiction” (or
6 “curatorship”) or “continuing tutorship” (as opposed to one of “guardianship” or
7 “conservatorship”), as the case may be; should refer to the adult in need of care as
8 an “interdict” or “person with intellectual disabilities” (as opposed to an
9 “incapacitated person” or a “protected person”), as the case may be; and should
10 refer to the superintendent of that adult as a “curator” or a “continuing tutor” (as
11 opposed to a “guardian” or a “conservator”), as the case may be. See Louisiana
12 Prefatory Note.

13 **§ 4251.203. Jurisdiction**

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

16 **(1) This state is the respondent’s home state.**

17 **(2) On the date the petition is filed, this state is a significant-**
18 **connection state, and:**

19 **(a) The respondent does not have a home state or a court of the**
20 **respondent’s home state has declined to exercise jurisdiction because this**
21 **state is a more appropriate forum; or**

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

25 **(i) A petition for an appointment or order is not filed in the**
26 **respondent’s home state.**

27 **(ii) An objection to the court’s jurisdiction is not filed by a person**
28 **required to be notified of the proceeding.**

1 (iii) The court in this state concludes that it is an appropriate forum
2 under the factors set forth in Section 4251.206.

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

8 (4) The requirements for special jurisdiction under Section 4251.204
9 are met.

10 § 4251.204. Special jurisdiction

11 A. A court of this state lacking jurisdiction under Section 4251.203(1)
12 through (3) has special jurisdiction to do any of the following:

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

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

17 (3) Appoint a guardian or conservator for an incapacitated or
18 protected person for whom a provisional order to transfer the proceeding
19 from another state has been issued under procedures similar to Section
20 4251.301.

21 B. If a petition for the appointment of a guardian in an emergency is
22 brought in this state and this state was not the respondent's home state on
23 the date the petition was filed, the court shall dismiss the proceeding at the

1 request of the court of the home state, if any, whether dismissal is requested
2 before or after the emergency appointment.

3 **§ 4251.205. Exclusive and continuing jurisdiction**

4 Except as otherwise provided in Section 4251.204, a court that has
5 appointed a guardian or issued a protective order consistent with this
6 Chapter has exclusive and continuing jurisdiction over the proceeding until
7 it is terminated by the court or the appointment or order expires by its own
8 terms.

9 2016 Louisiana Comment

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

20 **§ 4251.206. Appropriate forum**

21 A. A court of this state having jurisdiction under Section 4251.203 to
22 appoint a guardian or issue a protective order may decline to exercise its
23 jurisdiction if it determines at any time that a court of another state is a more
24 appropriate forum.

25 B. If a court of this state declines to exercise its jurisdiction under
26 Subsection A, it shall either dismiss or stay the proceeding. The court may
27 impose any condition the court considers just and proper, including the

1 condition that a petition for the appointment of a guardian or issuance of a
2 protective order be filed promptly in another state.

3 C. In determining whether it is an appropriate forum, the court shall
4 consider all relevant factors, including:

5 (1) Any expressed preference of the respondent.

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

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

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

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

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

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

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

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

20 § 4251.207. Jurisdiction declined by reason of conduct

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

1 **(1) Decline to exercise jurisdiction.**

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

8 **(3) Continue to exercise jurisdiction after considering:**

9 **(a) The extent to which the respondent and all persons required to be**
10 **notified of the proceedings have acquiesced in the exercise of the court's**
11 **jurisdiction.**

12 **(b) Whether it is a more appropriate forum than the court of any**
13 **other state under the factors set forth in Subsection 4251.206(C).**

14 **(c) Whether the court of any other state would have jurisdiction**
15 **under factual circumstances in substantial conformity with the jurisdictional**
16 **standards of Section 4251.203.**

17 **B. If a court of this state determines that it acquired jurisdiction to**
18 **appoint a guardian or issue a protective order because a party seeking to**
19 **invoke its jurisdiction engaged in unjustifiable conduct, it may assess against**
20 **that party necessary and reasonable expenses, including attorney's fees,**
21 **investigative fees, court costs, communication expenses, witness fees and**
22 **expenses, and travel expenses. The court may not assess fees, costs, or**
23 **expenses of any kind against this state or a governmental subdivision.**

1 agency, or instrumentality of this state unless authorized by law other than
2 this Chapter.

3 § 4251.208. Notice of proceeding

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

11 § 4251.209. Proceedings in more than one state

12 Except for a petition for the appointment of a guardian in an
13 emergency or issuance of a protective order limited to property located in
14 this state under Section 4251.204(A)(1) or (A)(2), if a petition for the
15 appointment of a guardian or issuance of a protective order is filed in this
16 state and in another state and neither petition has been dismissed or
17 withdrawn, the following rules apply:

18 (1) If the court in this state has jurisdiction under Section 4251.203, it
19 may proceed with the case unless a court in another state acquires
20 jurisdiction under provisions similar to Section 4251.203 before the
21 appointment or issuance of the order.

22 (2) If the court in this state does not have jurisdiction under Section
23 4251.203, whether at the time the petition is filed or at any time before the

1 appointment or issuance of the order, the court shall stay the proceeding and
2 communicate with the court in the other state. If the court in the other state
3 has jurisdiction, the court in this state shall dismiss the petition unless the
4 court in the other state determines that the court in this state is a more
5 appropriate forum.

6 PART III. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

7 § 4251.301. Transfer of guardianship or conservatorship to another state

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

10 B. Notice of a petition under Subsection A must be given to the
11 persons that would be entitled to notice of a petition in this state for the
12 appointment of a guardian or conservator.

13 C. On the court's own motion or on request of the guardian or
14 conservator, the incapacitated or protected person, or other person required
15 to be notified of the petition, the court shall hold a hearing on a petition filed
16 pursuant to Subsection A.

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

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

23 (2) An objection to the transfer has not been made or, if an objection

1 has been made, the objector has not established that the transfer would be
2 contrary to the interests of the incapacitated person.

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

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

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

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

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

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

21 (1) A provisional order accepting the proceeding from the court to
22 which the proceeding is to be transferred which is issued under provisions
23 similar to Section 4251.302; and

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

3 § 4251.302. Accepting guardianship or conservatorship transferred from
4 another state

5 A. To confirm transfer of a guardianship or conservatorship
6 transferred to this state under provisions similar to Section 4251.301, the
7 guardian or conservator must petition the court in this state to accept the
8 guardianship or conservatorship. The petition must include a certified copy
9 of the other state's provisional order of transfer.

10 B. Notice of a petition under Subsection A must be given to those
11 persons that would be entitled to notice if the petition were a petition for the
12 appointment of a guardian or issuance of a protective order in both the
13 transferring state and this state. The notice must be given in the same
14 manner as notice is required to be given in this state.

15 C. On the court's own motion or on request of the guardian or
16 conservator, the incapacitated or protected person, or other person required
17 to be notified of the proceeding, the court shall hold a hearing on a petition
18 filed pursuant to Subsection A.

19 D. The court shall issue an order provisionally granting a petition
20 filed under Subsection A unless:

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

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

3 E. The court shall issue a final order accepting the proceeding and
4 appointing the guardian or conservator as guardian or conservator in this
5 state upon its receipt from the court from which the proceeding is being
6 transferred of a final order issued under provisions similar to Section
7 4251.301 transferring the proceeding to this state.

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

12 G. In granting a petition under this Section, the court shall recognize
13 a guardianship or conservatorship order from the other state, including the
14 determination of the incapacitated or protected person's incapacity and the
15 appointment of the guardian or conservator.

16 H. The denial by a court of this state of a petition to accept a
17 guardianship or conservatorship transferred from another state does not
18 affect the ability of the guardian or conservator to seek appointment as
19 guardian or conservator in this state under Code of Civil Procedure Article
20 4561, if the court has jurisdiction to make an appointment other than by
21 reason of the provisional order of transfer.

1 (a) The provisional order contemplated by Subsection D is interlocutory.
2 Because there is no legislation that provides for the appeal of such an order, it is
3 not an “appealable judgment” for purposes of Code of Civil Procedure Article
4 2083. To obtain review of such an order, a party must apply for supervisory writs
5 in accordance with Code of Civil Procedure Article 2201. By contrast, a judgment
6 denying a petition for such a provisional order, inasmuch as it constitutes a “final
7 judgment,” is appealable under Code of Civil Procedure Article 2083.

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

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

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

37 (e) The ninety-day deadline established in Subsection F of this Section is
38 intended to serve merely as a “prompt” to encourage interested parties, sooner
39 rather than later, to examine the guardianship or conservatorship to determine
40 whether it needs to be modified to conform to Louisiana law. The deadline is not
41 intended to serve as a “prescriptive period” after which such modifications may
42 no longer be made. Once a Louisiana court finally accepts a transfer of a
43 guardianship or conservatorship, the court has full discretion to make any
44 modifications necessary to bring it into compliance with Louisiana law, just as it

1 would in a local case of interdiction or continuing tutorship. This is true whether
2 the problem is discovered within the initial ninety-day period or later.

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

7 **PART IV. REGISTRATION AND RECOGNITION OF ORDERS**

8 **FROM OTHER STATES**

9 **§ 4251.401. Registration of guardianship orders**

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

16 2016 Louisiana Comment

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

22 **§ 4251.402. Registration of protective orders**

23 **If a conservator has been appointed in another state and a petition for**
24 **a protective order is not pending in this state, the conservator appointed in**
25 **the other state, after giving notice to the appointing court of an intent to**
26 **register, may register the protective order in this state by filing certified**
27 **copies of the order and letters of office and of any bond in the mortgage and**

1 conveyance records of any parish in which property belonging to the
2 protected person is located.

3 § 4251.403. Effect of registration

4 A. Upon registration of a guardianship or protective order from
5 another state, except as prohibited under the laws of this state, the guardian
6 or conservator may exercise in this state all powers authorized in the order of
7 appointment, subject to the provisions of Code of Civil Procedure Article
8 4556, including representing the incapacitated or protected person in actions
9 and proceedings in this state and, if the guardian or conservator is not a
10 resident of this state, subject to any conditions imposed upon nonresident
11 parties.

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

14 PART V. MISCELLANEOUS PROVISIONS

15 § 4251.501. Uniformity of application and construction

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

19 § 4251.502. Relation to Electronic Signatures in Global and National
20 Commerce Act

21 This Chapter modifies, limits, and supersedes the federal Electronic
22 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et
23 seq., but does not modify, limit, or supersede Section 101(c) of that act, 15

1 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices
2 described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

3 § 4251.503. [Reserved.]

4 § 4251.504. Transitional provision

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

7 B. Parts 1, 3, and 4 and Sections 4251.501 and 502 apply to
8 proceedings begun before the effective date, regardless of whether a
9 guardianship or protective order has been issued.

10 § 4251.505. [Reserved.]

11 * * *

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

14 Art. 10. Jurisdiction over status

15 A. A court which is otherwise competent under the laws of this state has
16 jurisdiction of the following actions or proceedings only under the following
17 conditions:

18 * * *

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

23 (4) A tutorship or curatorship proceeding if the minor, ~~interdict,~~ or

1 absentee, as the case may be, is domiciled in this state or has property herein.

2 * * *

3 Art. 4556. Ancillary interdiction procedure

4 A. Upon producing proof of his appointment, a conservator ~~of a ward~~
5 ~~residing outside Louisiana~~ who was appointed by a court outside of Louisiana
6 may appear in court on behalf of the ward **protected person** without qualifying as
7 a curator according to the law of Louisiana when no curator has been appointed in
8 this state. In accordance with the authority set forth in his letters, such a
9 conservator may perform acts affecting the ~~ward's~~ **protected person's** property in
10 Louisiana when authorized by the court of the parish in which the property is
11 located. Once so authorized, the conservator shall act in the same manner and in
12 accordance with the same procedures as a curator appointed by a court in
13 Louisiana. Whenever the action of an undercurator would be necessary, the court
14 shall appoint an undercurator ad hoc.

15 B. In order to take possession of the ~~ward's~~ **protected person's** property,
16 or to remove any of it from the state, a conservator appointed by a court outside
17 Louisiana shall file a petition for authority to do so in the court of the parish in
18 which any of the property is located. The court shall render a judgment granting
19 the authority prayed for if the foreign conservator alleges in the petition that there
20 are no Louisiana creditors of the ~~ward~~ **protected person**, or that all such known
21 creditors have been paid, and if the foreign conservator attaches to the petition an
22 irrevocable power of attorney appointing a resident of this state to receive service
23 of process in any action or proceeding brought in Louisiana to enforce a claim

1 against the ~~ward~~ protected person, or against any of the ~~ward's~~ protected
2 person's property located in this state.

3 * * *

4 Section 3. The Louisiana State Law Institute is hereby directed to note
5 where appropriate in the Louisiana Uniform Adult Guardianship Protective
6 Proceedings Jurisdiction Act the uniform commentary and prefatory notes of the
7 Uniform Adult Guardianship Protective Proceedings Jurisdiction Act.

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

9 _____
The following digest, which constitutes no part of the legislative instrument, was
prepared by the Louisiana State Law Institute.

DIGEST

AUTHOR (SBxx)

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 Louisiana Uniform Adult Guardianship Protective Proceedings Jurisdiction Act.

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, the 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. 13:4251.101-4251.106, 4251.201-4251.209, 4251.301 and 4251.302, 4251.401-4251.403, and 4251.501-4251.505)