

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1275

(Delegate McComas, *et al.*)

Judiciary

Judicial Proceedings

Maryland Uniform Adult Guardianship and Protective Proceedings Jurisdiction
Act

This bill establishes the Maryland Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The bill applies to guardianship and protective proceedings beginning on or after October 1, 2010.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill addresses jurisdiction of Maryland courts over adult guardianship and protective proceedings, in relation to courts in other states, and related issues. The bill contains various provisions concerning:

- circumstances under which a Maryland court has jurisdiction to appoint a guardian (person appointed to make decisions regarding an adult) or issue a protective order (appointing a conservator or guardian of property to administer/manage the property of an adult), in relation to courts in other states; the duration of jurisdiction once the court has appointed a guardian or issued a protective order; the ability of a Maryland court to decline jurisdiction if it determines a court of another state is a more appropriate forum; and factors to be considered in determining whether the court is an appropriate forum;

- options available to a court if it determines it acquired jurisdiction because of unjustifiable conduct, including the assessment of specified fees, costs, and expenses against the party that engaged in unjustifiable conduct;
- rules applicable when a petition for the appointment of a guardian or issuance of a protective order is filed both in Maryland and in another state;
- communication and cooperation between a Maryland court and a court in another state regarding a guardianship or protective proceeding;
- testimony of witnesses in another state;
- notice requirements applicable to the filing of petitions for appointment of a guardian or issuance of a protective order;
- transfer of a guardianship or conservatorship to another state; and
- registration of a guardianship or protective order issued in another state, in a court in Maryland.

A Maryland court may treat a foreign country as if the country was a state in applying the provisions of the bill, with the exception of the provisions relating to registration in a Maryland court of a guardianship or protective order issued in another state. Specified restrictions and authorizations apply, however, if a Maryland court does not find by a preponderance of the evidence that a foreign country applies and follows substantive and procedural due process consistent with the practices and policies of the State.

Current Law/Background: The circuit courts in Maryland have exclusive jurisdiction over guardianship and protective proceedings for disabled persons (person other than a minor requiring a guardian of the person or the person's property). A guardian is appointed for a disabled person if the court determines: (1) the person is unable to manage the person's property and affairs effectively, for any number of specified reasons, and has or may be entitled to property or benefits that require proper management; or (2) based on clear and convincing evidence, the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person because of any mental disability, disease, habitual drunkenness, or drug addiction, and no less restrictive form of intervention is available that is consistent with the person's welfare or safety.

This bill is a modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) drafted, and approved and recommended (in 2007) for enactment in all states, by the National Conference of Commissioners on Uniform State Laws (NCCUSL). NCCUSL indicates the Act has so far been adopted in 12 states and the District of Columbia and, in 2009, was introduced in 10 states, including Maryland.

The prefatory note to the UAGPPJA indicates that the 50 plus guardianship systems in the United States (and systems in other countries) result in frequent problems of determining jurisdiction. According to the prefatory note, in most American states a court's jurisdiction to appoint a guardian or conservator is based on the individual's domicile or where the individual is physically present (with respect to a guardianship) or has property (with respect to a conservatorship). The note indicates that questions of jurisdiction between states can arise when a person is physically located in a state other than the person's domicile, or there is uncertainty regarding the person's domicile. The UAGPPJA is intended to provide an effective mechanism for resolving multi-jurisdictional disputes. The act also provides an expedited process for transferring guardianships and conservatorships between states and a registration procedure to allow for recognition of out-of-state guardianship or protective orders.

Additional Information

Prior Introductions: SB 122 passed in the Senate, as amended, and received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: SB 231 (Senators Kelley and Forehand) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), National Conference of Commissioners on Uniform State Laws, Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2010
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