

3B:12B-1 to 3B:12B-22
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2012 **CHAPTER:** 36

NJSA: 3B:12B-1 to 3B:12B-22 (Establishes the "New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act.")

BILL NO: S1755 (Substituted for A2628)

SPONSOR(S) Madden and others

DATE INTRODUCED: March 5, 2012

COMMITTEE: **ASSEMBLY:** Judiciary
SENATE: Health, Human Services and Senior Citizens

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 21, 2012
SENATE: May 31, 2012

DATE OF APPROVAL: August 7, 2012

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (First reprint enacted)

S1755

SPONSOR'S STATEMENT: (Begins on page 18 of introduced bill)	Yes
COMMITTEE STATEMENT:	ASSEMBLY: Yes
	SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT:	No
LEGISLATIVE FISCAL ESTIMATE:	No

A2628

SPONSOR'S STATEMENT: (Begins on page 18 of introduced bill)	Yes
COMMITTEE STATEMENT:	ASSEMBLY: Yes
	SENATE: No

FLOOR AMENDMENT STATEMENT:	No
LEGISLATIVE FISCAL ESTIMATE:	No

(continued)

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/RWH

Title 3B.
Chapter 12B
(New).
New Jersey Adult
Guardianship and
Protective
Proceedings
Jurisdiction Act.
§§1-21,24 -
C.3B:12B-1 to
3B:12B-22
§25 - Repealer
§26 - Note

(CORRECTED COPY)

P.L.2012, CHAPTER 36, *approved August 7, 2012*
Senate, No. 1755 (*First Reprint*)

1 AN ACT concerning adult guardianship proceedings and revising
2 various parts of the statutory law and supplementing Title 3B of
3 the New Jersey Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. (New section) This act shall be known and may be cited as
9 the “New Jersey Adult Guardianship and Protective Proceedings
10 Jurisdiction Act.”

11

12 2. (New section) Scope of Act.

13 a. P.L. , c. (C.) (pending before the Legislature as
14 this bill) governs the exercise of jurisdiction over guardianship or
15 protective orders, as those terms are defined in P.L. , c.
16 (C.) (pending before the Legislature as this bill), when there
17 are interstate conflicts or uncertainty regarding ¹**[this jurisdiction]**
18 whether a court of this State or a court of another state should act¹.

19 The act establishes uniform procedures that are intended to be used
20 to facilitate proceedings between courts in different states and to
21 resolve uncertainty about appropriate jurisdiction.

22 b. P.L. , c. (C.) (pending before the Legislature as
23 this bill) is not intended to and does not alter substantive law
24 pertaining to guardianship, conservatorship and protective
25 proceedings^{1, 1} or arrangements and protective orders as defined
26 elsewhere in Title 3B of the New Jersey Statutes ¹or the original

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SHH committee amendments adopted May 17, 2012.

1 general jurisdiction of the Superior Court throughout the State in all
2 causes¹.

3

4 3. (New section) Definitions.

5 As used in P.L. , c. (C.) (pending before the Legislature
6 as this bill), unless otherwise defined:

7 a. “Adult” means ¹[an individual] a person¹ at least 18 years
8 of age.

9 b. ¹“Conservatee” means, as used in this State, a person who has
10 not been adjudicated incapacitated but who by reason of advanced
11 age, illness, or physical infirmity, is unable to care for or manage
12 his property or has become unable to provide for himself or others
13 dependent upon him for support.

14 c. ¹ “Conservator” means a person appointed by the court to
15 administer the property of an adult ¹who has not been adjudicated
16 incapacitated¹, including a person appointed, as appropriate, under
17 N.J.S.3B:13A-1 et seq.

18 ¹d. “Court of this State” means the Superior Court of New
19 Jersey.

20 e. ¹ “Guardian” means a person appointed by the court to make
21 decisions regarding the person or ¹[property] estate¹ of an
22 incapacitated adult, including a person who has qualified as a
23 guardian of the person or estate, or both, of an incapacitated person
24 pursuant to court appointment in accordance with N.J.S.3B:12-1 et
25 seq. or its equivalent in a state other than New Jersey.

26 ¹[d.] f.¹ “Guardianship order” means an order ¹declaring a
27 person incapacitated and¹ appointing a guardian.

28 ¹[e.] g.¹ “Guardianship proceeding” means a judicial
29 proceeding in which an order for the appointment of a guardian is
30 sought or has been issued ¹to declare a person incapacitated and to
31 appoint a guardian¹.

32 ¹[f.] h.¹ “Home state” means the state in which the respondent
33 was physically present, including any period of temporary absence,
34 for at least six consecutive months immediately before the filing of
35 a ¹[complaint] petition¹ for the appointment of a guardian or a
36 protective order; or if none, the state in which the respondent was
37 physically present, including any period of temporary absence, for
38 at least six consecutive months ending within the six months prior
39 to the filing of the ¹[complaint] petition¹.

40 ¹[g.] i.¹ “Incapacitated person” means an adult ¹declared
41 incapacitated and¹ for whom a guardian has been appointed.

42 ¹[h.] j.¹ “Party” means the respondent, petitioner ¹or plaintiff,
43 as applicable¹, guardian, conservator ¹or conservatee¹, or any other
44 person authorized by the court to participate in a guardianship or
45 protective proceeding.

1 ¹k. “Petition” means an initiating court document for
2 proceedings under P.L. , c. (C.) (pending before the
3 Legislature as this bill). In New Jersey, a petition shall mean a
4 verified complaint filed with the Superior Court pursuant to the
5 Rules of Court of the State of New Jersey.¹

6 ¹[i.] ¹l. “Protected person” means an adult for whom a
7 protective order has been issued.

8 ¹[j.] ¹m. “Protective order” means:

9 (1) An order related to an adult who has been declared
10 incapacitated by a court or for whom such a declaration is sought,
11 including^{1,1} but not limited to^{1,1} an arrangement or order related to
12 management of the incapacitated person’s property, which is issued
13 pursuant to N.J.S.3B:12-1 and N.J.S.3B:12-2; or

14 (2) An order appointing a conservator, including^{1,1} but not
15 limited to^{1,1} an order which is issued pursuant to N.J.S.3B:13A-1 et
16 seq; or

17 (3) An order to protect a “vulnerable adult” as that term is
18 defined in section 2 of P.L.1993, c.249 (C.52:27D-407),
19 including^{1,1} but not limited to^{1,1} an order which is issued pursuant
20 to the “Adult Protective Services Act,” P.L.1993, c.249 (C.52:27D-
21 406 et seq); or

22 (4) An order or arrangement, pursuant to N.J.S.3B:12-1, for a
23 person for whom a declaration of incapacity is not sought.

24 ¹The term “protective order,” as used in P.L. , c. (C.)
25 (pending before the Legislature as this bill), shall not be construed
26 to conflict with the provisions of N.J.S.3B:12-1 through
27 N.J.S.3B:12-4.¹

28 ¹[k.] ¹n. “Protective proceeding” means a judicial proceeding
29 in which a protective order is sought or has been issued.

30 ¹[l.] ¹o. “Record” means information that is inscribed on a
31 tangible medium or that is stored in an electronic or other medium
32 and is retrievable in perceivable form.

33 ¹p. “Registration” means a filing in this State of a guardianship
34 or conservatorship order of another state, pursuant to the Rules of
35 Court of the State of New Jersey and in accordance with the
36 provisions of section 19 of P.L. , c. (C.) (pending before
37 the Legislature as this bill).¹

38 ¹[m.] ¹q. “Respondent” means an adult for whom the
39 appointment of a guardian or the issuance of a protective order is
40 sought.

41 ¹[n.] ¹r. “Significant-connection state” means a state, other
42 than the home state, with which a respondent has a significant
43 connection other than mere physical presence and in which
44 substantial evidence concerning the respondent is available.

45 ¹[o.] ¹s. “State” means a state of the United States, the
46 District of Columbia, Puerto Rico, the United States Virgin Islands,

1 a federally recognized Indian tribe, or any territory or insular
2 possession subject to the jurisdiction of the United States.

3

4 4. (New section) International application of the act.

5 A court of this State may treat a foreign country as if it were a
6 state for the purpose of applying all sections of the P.L. ,c.
7 (C.) (pending before the Legislature as this bill) except for
8 sections 19 and 20 of P.L. ,c. (C.) (pending before the
9 Legislature as this bill) pertaining to registration.

10

11 5. (New section) Which act governs; exclusive jurisdictional
12 basis; applicability.

13 P.L. , c. (C.) (pending before the Legislature as this bill)
14 governs jurisdiction of guardianship proceedings and provides the
15 exclusive jurisdictional basis for a court of this State to appoint a
16 guardian or issue a protective order. The appointment of a guardian
17 shall continue to be governed by N.J.S.3B:12-1 et seq. and the
18 appointment of a conservator shall continue to be governed by
19 N.J.S.3B:13A-1 et seq.

20 P.L. , c. (C.) (pending before the Legislature as this bill)
21 act shall be construed and applied in conjunction with N.J.S.3B:12-
22 1 et seq. and N.J.S.3B:13A-1 et seq.

23

24 6. (New section) Communication between courts.

25 a. A court of this State may communicate with a court of
26 another state concerning a proceeding arising pursuant to P.L. ,c.
27 (C.) (pending before the Legislature as this bill). The court may
28 allow the parties to participate in the communication in accordance
29 with the Rules Governing the Courts of the State of New Jersey.

30 b. Except as otherwise provided in subsection c., the court shall
31 make a record of the communication. The record may be limited to
32 the fact that the communication occurred.

33 c. Courts may communicate concerning schedules, calendars,
34 court records, and other administrative matters without making a
35 record.

36

37 7. (New section) Cooperation between courts.

38 a. In a guardianship or protective proceeding, a court of this
39 State may request the appropriate court of another state to do any of
40 the following:

41 (1) hold an evidentiary hearing;

42 (2) order a person in that state to produce evidence or give
43 testimony pursuant to procedures of that state;

44 (3) order that an evaluation or assessment be made of the
45 respondent;

46 (4) order any appropriate investigation of a person involved in a
47 proceeding;

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

6 (6) issue any order necessary to assure the appearance in the
7 proceeding of a person whose presence is necessary for the court to
8 make a determination, including the respondent or the incapacitated
9 or protected person; and

10 (7) issue an order authorizing the release of medical, financial,
11 criminal, or other relevant information in that state, including
12 protected health information which meets federal and state laws.

13 b. If a court of another state in which a guardianship or
14 protective proceeding is pending requests assistance of the kind
15 provided in subsection (a), a court of this State has jurisdiction for
16 the limited purpose of granting the request or making reasonable
17 efforts to comply with the request.

18

19 8. (New section) Taking testimony in another state;
20 documentary evidence.

21 a. A court of this State may permit a witness located in another
22 state to be deposed or to testify by any means permitted by the
23 Rules Governing the Courts of the State of New Jersey. A court of
24 this State shall cooperate with the court of another state in
25 designating an appropriate location for the deposition or testimony.

26 b. Documentary evidence transmitted from another state to a
27 court of this State may be admitted into evidence consistent with
28 the New Jersey Rules of Evidence.

29

30 9. (New section) Jurisdiction; determination.

31 a. A court of this State has jurisdiction to 'declare a person
32 incapacitated and' appoint a guardian or issue a protective order for
33 a respondent if:

34 (1) This State is the respondent's home state as defined in
35 'section 3 of' P.L. , c. (C.) (pending before the Legislature
36 as this bill); or

37 (2) On the date the '[complaint] petition' is filed, this State is a
38 significant-connection state, as defined in 'section 3 of' P.L. , c.
39 (C.) (pending before the Legislature as this bill) and
40 determined in accordance with section 10 of P.L. , c. (C.)
41 (pending before the Legislature as this bill), and:

42 (a) the respondent either does not have a home state or a court of
43 the respondent's home state has declined to exercise jurisdiction
44 because this State is a more appropriate forum; or

45 (b) the respondent has a home state, a petition for an
46 appointment or order is not pending in a court of another state or
47 another significant-connection state, and, before this State's court
48 acts:

- 1 (i) a petition for an appointment or order is not filed in the
2 respondent's home state;
- 3 (ii) an objection to the court's jurisdiction is not filed by a person
4 required to be notified of the proceeding; and
- 5 (iii) the court concludes that it is an appropriate forum under the
6 factors set forth in section 13 of P.L. , c. (C.) (pending
7 before the Legislature as this bill);
- 8 (3) Although this State does not have jurisdiction under either
9 subsection a. or b. of this section, the home state and all significant-
10 connection states have declined to exercise jurisdiction because this
11 State is the more appropriate forum, and jurisdiction in this State is
12 consistent with the New Jersey and United States Constitutions; or
- 13 b. A court of this State may assume emergency jurisdiction
14 under section 11 of P.L. , c. (C.) (pending before the
15 Legislature as this bill).
16
- 17 10. (New section) Significant-connection state; determination.
18 In determining whether a respondent has a significant connection
19 with a particular state, the court shall consider:
 - 20 a. the location of the respondent's family and other persons
21 required to be notified of the guardianship or protective proceeding;
 - 22 b. the length of time the respondent at any time was physically
23 present in the state and the duration of any absence;
 - 24 c. the location of the respondent's property; and
 - 25 d. the extent to which the respondent has ties to the state such
26 as voting registration, state or local tax return filing, vehicle
27 registration, driver's license, social relationship, and receipt of
28 services.
29
- 30 11. (New section) Emergency jurisdiction.
 - 31 a. A court of this State lacking jurisdiction under section 9 of
32 P.L. , c. (C.) (pending before the Legislature as this bill)
33 has emergency jurisdiction to do any of the following:
 - 34 (1) appoint a guardian or issue a protective order in an
35 emergency, in accordance with subsection c. of section 12 of
36 P.L.2005, c.304 (C.3B:12-24.1) and this section, for a respondent
37 who is physically present in this State;
 - 38 (2) appoint a guardian of real or tangible personal property
39 located in this State for which the respondent has an ownership
40 interest;
 - 41 (3) issue a protective order with respect to real or tangible
42 personal property in this State; or
 - 43 (4) appoint, under procedures similar to section 17 of
44 P.L. , c. (C.) (pending before the Legislature as this bill),
45 a guardian or conservator for an incapacitated or protected person
46 for whom a provisional order to transfer the proceeding from
47 another state has been issued.

1 b. If a petition for the appointment of a guardian or issuance of
2 a protective order in an emergency in accordance with subsection c.
3 of section 12 of P.L.2005, c.304 (C.3B:12-24.1) and this section is
4 brought in this State and this State was not the respondent's home
5 state on the date the petition was filed, the court shall dismiss the
6 proceeding at the request of the court of the home state, if any,
7 whether dismissal is requested before or after the emergency
8 appointment.

9
10 12. (New section) Exclusive and continuing jurisdiction.

11 Except as otherwise provided in section 11 of
12 P.L. , c. (C.) (pending before the Legislature as this bill),
13 a court that has appointed a guardian or issued a protective order
14 consistent with P.L. , c. (C.) (pending before the
15 Legislature as this bill) has exclusive and continuing jurisdiction
16 over the proceeding until the proceeding is terminated by the court,
17 or the appointment or order expires by its own terms.

18
19 13. (New section) Appropriate forum.

20 a. A court of this State having jurisdiction under section 9 of
21 P.L. , c. (C.)(pending before the Legislature as this bill) to
22 'declare a person incapacitated,' appoint a guardian^{1,1} or issue a
23 protective order^{1,1} may decline to exercise jurisdiction if it
24 determines at any time that a court of another state is a more
25 appropriate forum.

26 b. If a court of this State declines to exercise jurisdiction under
27 subsection a. 'of this section', it shall either dismiss or stay the
28 proceeding. The court may impose any condition it deems just and
29 proper, including the condition that a '[complaint] petition' for the
30 appointment of a guardian or issuance of a protective order be filed
31 promptly in another state.

32 c. In determining whether it is an appropriate forum, the court
33 shall consider all relevant factors, including:

34 (1) any expressed preference of the respondent;

35 (2) whether abuse, neglect, or exploitation of the respondent has
36 occurred or is likely to occur and which state could best protect the
37 respondent from the abuse, neglect, or exploitation;

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

40 (4) the distance of the respondent from the court of each state;

41 (5) the financial circumstances of the respondent's estate;

42 (6) the nature and location of the evidence;

43 (7) the ability of the court of each state to decide the issue
44 expeditiously and the procedures necessary to present evidence;

45 (8) the familiarity of the court of each state with the facts and
46 issues in the proceeding; and

47 (9) if an appointment were to be made, the court's ability to
48 monitor the conduct of the guardian or the conservator.

1 14. (New section) Jurisdiction declined by reason of conduct.

2 a. If¹ at any time¹ a court of this State determines that it
3 acquired jurisdiction to 'declare a person incapacitated.'¹ appoint a
4 guardian¹ or issue a protective order because of unjustifiable
5 conduct, the court may:

6 (1) decline to exercise jurisdiction;

7 (2) exercise jurisdiction for the limited purpose of fashioning an
8 appropriate remedy to ensure the health, safety, and welfare of the
9 respondent or the protection of the respondent's property or prevent
10 a repetition of the unjustifiable conduct, including staying the
11 proceeding until a **'[complaint] petition'**¹ for the appointment of a
12 guardian or issuance of a protective order is filed in a court of
13 another state having jurisdiction; or

14 (3) continue to exercise jurisdiction after considering:

15 (a) the extent to which the respondent and all persons required to
16 be notified of the proceedings have acquiesced in the exercise of the
17 court's jurisdiction;

18 (b) whether it is a more appropriate forum than the court of any
19 other state under the factors set forth in subsection c. of section 13
20 of P.L. , c. (C.) (pending before the Legislature as this
21 bill); and

22 (c) whether the court of any other state would have jurisdiction
23 under factual circumstances in substantial conformity with the
24 jurisdictional standards of section 9 of P.L. , c. (C.)
25 (pending before the Legislature as this bill).

26 b. If a court of this State determines that it acquired jurisdiction
27 to appoint a guardian or issue a protective order because a party
28 seeking to invoke its jurisdiction engaged in unjustifiable conduct,
29 it may assess against that party necessary and reasonable expenses,
30 including attorneys' fees, investigative fees, court costs,
31 communication expenses, witness fees and expenses, and travel
32 expenses. The court may not assess fees, costs, or expenses of any
33 kind against this State or a governmental subdivision, agency, or
34 instrumentality of this State unless authorized by law other than
35 P.L. , c. (C.) (pending before the Legislature as this bill).

36
37 15. (New section) Notice of proceeding.

38 If this State was not the respondent's home state on the date a
39 **'[complaint] petition to declare a person incapacitated'**¹ for the
40 appointment of a guardian or issuance of a protective order is filed
41 in this State, notice of the **'[complaint] petition'**¹ shall be given, in
42 the same manner as notice is required to be given in this State, to
43 the respondent and to the persons who would be entitled to notice if
44 the regular procedures for appointment of a guardian or a
45 conservator under the Rules Governing the Courts of the State of
46 New Jersey were applicable.

1 16. (New section) Proceedings in more than one state.

2 Except for a '[complaint] petition' for the appointment of a
3 guardian or issuance of a protective order in an emergency under
4 paragraph (1) of subsection a. of section 11 of P.L. , c. (C.)
5 (pending before the Legislature as this bill), or appointment of a
6 guardian of '[property] estate' or issuance of a protective order
7 limited to property located in this State under paragraphs (2) or (3)
8 of subsection a. of section 11 of P.L. , c. (C.) (pending
9 before the Legislature as this bill)', if a '[complaint] petition' for
10 the appointment of a guardian or issuance of a protective order is
11 filed in this State and in another state and neither '[complaint]
12 petition' has been dismissed or withdrawn, the following shall
13 apply:

14 a. A court of this State with jurisdiction under section 9 of
15 P.L. , c. (C.) (pending before the Legislature as this bill) may
16 proceed unless a court of another state acquires jurisdiction under
17 similar provisions before the appointment or issuance of the order.

18 b. A court of this State without jurisdiction under section 9 of
19 P.L. , c. (C.) (pending before the Legislature as this bill),
20 whether at the time the '[complaint] petition' is filed or at any time
21 before the appointment or issuance of '[the] a judgment or' order,
22 shall stay the proceeding and communicate with the court of another
23 state. If the court in the other state has jurisdiction, the court of this
24 State shall dismiss the '[complaint] petition' unless the court in the
25 other state determines that the court of this State is a more
26 appropriate forum.

27
28 17. (New section) Transfer of guardianship or conservatorship to
29 another state.

30 a. A guardian or conservator appointed', or a conservatee,' in
31 this State may petition the court to transfer the guardianship or
32 conservatorship to another state.

33 b. Notice of a petition for transfer shall be given to the persons
34 that would be entitled to notice of a petition in this State for the
35 appointment of a guardian or conservator.

36 c. On the court's own motion or upon request of the guardian
37 or conservator 'or conservatee', or other person required to be
38 notified of the '[complaint] petition', the court shall hold a hearing
39 on a petition to transfer.

40 d. The court shall issue an order provisionally granting a
41 petition to transfer a guardianship and direct the guardian to petition
42 for guardianship in the other state if the court is satisfied that the
43 guardianship will be accepted by the court of the other state and the
44 court finds that:

45 (1) in the case of a guardianship of the person, the incapacitated
46 person is physically present in or is reasonably expected to move
47 permanently to the other state, or in the case of a guardianship of

1 '【property】 estate'¹, the incapacitated person is physically present in
2 or is reasonably expected to move permanently to, or has a
3 significant connection to, the other state; and

4 (2) an objection to the transfer has not been made or, that the
5 transfer would not be contrary to the interests of the incapacitated
6 person; and

7 (3) in the case of a guardianship of the person, plans for care and
8 services for the incapacitated person in the other state are
9 reasonable and sufficient, or in the case of a guardianship of
10 '【property】 the estate'¹, adequate arrangements are made for
11 management of the incapacitated person's property.

12 e. The court shall issue a provisional order granting a transfer
13 'of'¹ a conservatorship and shall direct the conservator to petition
14 for conservatorship in the other state if the court is satisfied that the
15 conservatorship will be accepted by the court of the other state and
16 the court finds that:

17 (1) the protected person is physically present in or is reasonably
18 expected to move permanently to the other state, or the protected
19 person has a significant connection to the other state considering the
20 factors in section 10 of P.L. , c. (C.) (pending before the
21 Legislature as this bill);

22 (2) an objection to the transfer has not been made or, that the
23 transfer would not be contrary to the interests of the incapacitated
24 person; and

25 (3) adequate arrangements will be made for management of the
26 protected person's property.

27 f. The court shall issue a final order confirming the transfer
28 and terminating the guardianship or conservatorship upon receipt
29 of:

30 (1) a provisional order accepting the guardianship or
31 conservatorship from the court to which the guardianship or
32 conservatorship is to be transferred under provisions similar to
33 section 18 of P.L. , c. (C.) (pending before the Legislature
34 as this bill); and

35 (2) the documents required to terminate a guardianship or
36 conservatorship in this State.

37
38 18. (New section) Accepting guardianship or conservatorship
39 transferred from another state.

40 a. To confirm transfer of a guardianship or conservatorship to
41 this State under provisions similar to section 17 of
42 P.L. , c. (C.) (pending before the Legislature as this bill),
43 the guardian or conservator in the other state shall file a
44 '【complaint】 petition'¹ in the court of this State to accept the
45 guardianship of the person or the person's '【property】 estate'¹, or
46 both, or the conservatorship. The '【complaint】 petition'¹ shall
47 include a certified copy of the other state's provisional order of
48 transfer.

1 b. Notice of a '[complaint] petition' under this section shall be
2 given, in the same manner as notice is required to be given in this
3 State, to those persons that would be entitled to notice if the
4 '[complaint] petition' were for the appointment of a guardian or
5 issuance of a protective order in both the transferring state and this
6 State.

7 c. On the court's own motion or upon request of the guardian
8 or of the conservator 'or conservatee', or other person required to
9 be notified of the proceeding, the court shall hold a hearing on a
10 '[complaint] petition' filed pursuant to this section.

11 d. The court shall issue an order provisionally granting relief
12 under this section unless:

13 (1) an objection is made and the court determines that transfer of
14 the proceeding would be contrary to the interests of the
15 incapacitated or protected person 'or conservatee'; or

16 (2) the guardian or conservator is ineligible for appointment in
17 this State.

18 e. The final order accepting the proceeding and appointing the
19 guardian or conservator from the other state as guardian of the
20 person or '[property] estate', or both, or conservator in this State
21 shall be issued upon the receipt by this State's court of a final order
22 issued under provisions similar to section 17 of P.L. , c. (C.)
23 (pending before the Legislature as this bill) transferring the
24 proceeding to this State.

25 f. Upon application of a party or upon the court's own motion,
26 the court shall determine whether the guardianship of the person or
27 '[property] estate', or both, or the conservatorship needs to be
28 modified to conform to the law of this State.

29 g. In granting an application under this section, the court shall
30 recognize a guardianship or conservatorship order from the other
31 state, including the determination of the incapacitated person's
32 incapacity and the appointment of the guardian of the person or
33 '[property] estate', or both, or of the conservator.

34 h. The denial by a court of this State of an application to accept
35 a guardianship or conservatorship transferred from another state
36 does not affect the ability of the guardian or conservator to seek
37 appointment as guardian of the person or '[property] estate', or
38 both, in this State under N.J.S.3B:12-25 or as conservator under
39 N.J.S.3B:13A-1 et seq., if the court has jurisdiction to make an
40 appointment other than by reason of the provisional order of
41 transfer.

42
43 19. (New section) Registration of guardianship or
44 conservatorship orders.

45 If a guardian has been appointed in another state and an
46 application for the appointment of a guardian of the person or
47 '[property] estate', or both, is not pending in this State, or if a

1 conservator has been appointed in another state and an application
2 for the appointment of a conservator is not pending in this State, the
3 guardian or conservator appointed in the other state, after giving
4 notice to the appointing court of an intent to register, may register
5 the guardianship or conservatorship order in this State ¹["by filing in
6 the Superior Court, Probate Division] with the Surrogate, as Deputy
7 Clerk of the Superior Court, Chancery Division, Probate Part¹, in
8 ¹["any] an¹ appropriate county of this State, pursuant to the Rules
9 of Court of the State of New Jersey, by filing¹ certified copies of
10 the order and letters of office, and of any bond, as appropriate. For
11 purposes of a guardian of the person, an appropriate county is any
12 county where the guardian seeks to maintain an action or
13 proceeding on behalf of the incapacitated person; for purposes of a
14 guardian of the property or of a conservatorship, an appropriate
15 county is the county where the property belonging to the
16 incapacitated person or conservatee is located.

17

18 20. (New section) Effect of registration.

19 a. Upon registration of a guardianship or protective order from
20 another state, the guardian or conservator may exercise in this State
21 all powers authorized in the order of appointment except as
22 prohibited under the laws of this State, including maintaining
23 actions and proceedings in this State and, if the guardian or
24 conservator is not a resident of this State, subject to any conditions
25 imposed upon nonresident parties.

26 b. A court of this State may grant any relief available under
27 P.L. , c. (C.) (pending before the Legislature as this bill)
28 and other law of this State to enforce a registered order.

29 c. A court of this State shall recognize and enforce, but may not
30 modify, except in accordance with ¹["section 18 of"]¹ P.L. , c.
31 (C.) (pending before the Legislature as this bill), a registered
32 order.

33

34 21. (New section) Uniformity of application and construction.

35 In applying and construing this uniform act, consideration shall
36 be given to the need to promote uniformity of the law with respect
37 to its subject matter among states that enact it.

38

39 ¹["22. N.J.S.3B:12-29 is amended to read as follows:

40 3B:12-29. Appointment of guardian of the property for
41 nonresident incapacitated **person** minor.

42 When a nonresident minor has been or shall be found to be an
43 incapacitated person under the laws of the state or country wherein
44 the nonresident resides, the Superior Court may appoint a guardian
45 for the nonresident's property in this State.

46 (cf: P.L.2005, c.304, s.17)]¹

1 ¹[23. N.J.S.22A:2-30 is amended to read as follows:

2 22A:2-30. Fees of surrogate and deputy clerk of the Superior
3 Court. Fees for services of the surrogate and deputy clerk of the
4 Superior Court enumerated below shall be as follows and shall be
5 for the use of the county in which the fees are collected:

6 **PROBATE OF WILLS AND COPIES**

7 Probate of a will of not more than two pages, \$100.00.

8 Each additional page, \$ 5.00.

9 The above fee is for all services in preparation and execution of
10 complaint, filing proof of death, deposition of one witness,
11 qualification of executor, filing power of attorney, surrogate's
12 certificate, judgment for probate, letters testamentary, plain copy of
13 will, binding, recording, microfilming or photostating, comparing,
14 docketing, report to the Division of Taxation in the Department of
15 the Treasury, report and transmission to the Clerk of the Superior
16 Court.

17 Probate of will of not more than two pages without letters,
18 \$50.00. Each additional page, \$ 5.00. This fee is for the same
19 services as are enumerated in the preceding paragraph, except
20 letters, surrogate's certificate and qualification of executor.

21 Probate of each codicil, not exceeding one page, \$25.00.

22 Where codicil requires an additional witness, \$5.00.

23 To reopen probate proceedings for qualification of executor or
24 taking proof of extra witness, \$25.00.

25 One witness in the above probate proceedings, no charge.

26 Each additional witness, \$5.00.

27 Recording and comparing, microfilming or photostating, each
28 additional page of will or codicil, \$5.00.

29 Filing, entering, issuing and recording, microfilming or
30 photostating, proceedings in commission for deposition of foreign
31 witness to a will or codicil, \$35.00. Plain extra copy of will, \$3.00
32 for each page.

33 Certified extra copy of will, \$5.00 for each page, plus \$5.00 for
34 certificate.

35 Certified copy of will with proofs for New Jersey county, not
36 exceeding two pages including will and codicil, \$50.00. For pages
37 in excess of two, \$5.00 for each page.

38 Wills filed but not probated (as, where there are no assets),
39 \$10.00 for first two pages, \$5.00 for each additional page, \$5.00 for
40 cover letter stating no assets, \$5.00 for death certificate.

41 Exemplifying will for another state, not exceeding two pages
42 including will and codicil, plus cost of certificate of Secretary of
43 State when requisite, \$75.00 (not including \$9.00 fee for
44 exemplified forms). For pages in excess of two, \$5.00 for each
45 page.

46 Recording, microfilming or photostating, docketing, indexing,
47 filing and reporting to the Division of Taxation in the Department

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14

1 of the Treasury an exemplified copy of will and probate
2 proceedings from another state, \$5.00 for each page.

3 Recording, microfilming or photostating, docketing, indexing
4 and filing a certified copy of will with proofs from New Jersey,
5 \$5.00 for each page.

6 Recording, microfilming or photostating certified transcripts of
7 wills admitted to probate and probate proceedings or letters of
8 administration and administration proceedings granted by the
9 Superior Court, \$5.00 for each page.

10 **LETTERS OF TRUSTEESHIP**

11 Acceptance of trustee and letters of trusteeship, including one
12 certificate, \$50.00.

13 **LETTERS OF ADMINISTRATION**

14 General administration, including preparation and execution of
15 complaint, bond, surety affidavits, necessary recording,
16 microfilming or photostating, indexing, filing, report to the Division
17 of Taxation, including power of attorney and death certificate, in
18 the Department of the Treasury and the Clerk of the Superior Court
19 and original letters including authorization to accept service of
20 process and death certificate, \$125.00, and for other documents,
21 \$5.00 per page.

22 Administration ad prosequendum, \$50.00, and for other
23 documents, \$5.00 per page.

24 Exemplifying administration, \$75.00.

25 Certified copy of administration, \$50.00.

26 Affidavits of surviving spouse or next of kin where the value of
27 the real and personal assets of the estate does not exceed
28 \$20,000.00 or \$10,000.00, respectively, \$5.00 for each \$100.00 or
29 part thereof. Total cost shall not exceed \$50.00. This fee is waived
30 where the value of the assets of the estate does not exceed \$200.00.

31 **LETTERS OF GUARDIANSHIP**

32 Granting letters of guardianship, acceptance of guardianship and
33 filing of power of attorney, \$50.00.

34 Affidavits of estates of minors where value of real and personal
35 estate does not exceed \$5,000.00, \$5.00 per page.

36 Miscellaneous petitions and orders, \$5.00 per page.

37 **INVENTORIES**

38 For all services in appointment of appraisers, \$25.00.

39 Filing, entering and recording, microfilming or photostating,
40 inventory and appraisal, not exceeding one page, and affidavits
41 of appraisers and executor, \$25.00.

42 For each additional page, \$5.00.

43 **ACCOUNTING**

44 For filing complaint and one page of accounting, \$175.00.

45 For auditing, stating, reporting and recording, microfilming or
46 photostating, accounts of executors, administrators, guardians,
47 trustees and assignees, including drawing judgment, but exclusive
48 of advertising costs:

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15

1 In estates up to and including \$2,000.00, no additional fee.

2 In estates from \$2,001.00 to and including \$10,000.00, \$100.00.

3 In estates from \$10,001.00 to and including \$30,000.00, \$125.00.

4 In estates from \$30,001.00 to and including \$65,000.00, \$150.00.

5 In estates from \$65,001.00 to and including \$200,000.00, 3/10 of
6 1% but not less than \$300.00.

7 In estates exceeding \$200,000.00--4/10 of 1%, but not less than
8 \$400.00.

9 For each page of accounting in excess of one, \$5.00.

10 In computing the amount of an estate for the purpose of fixing
11 the fees of a surrogate for auditing and reporting the account, the
12 balance from the prior account shall be excluded.

13 For preparing notice of settlement of accounts and copies of the
14 same, forwarding notice to newspaper, with directions as to
15 publication, obtaining proofs of publication, keeping a record of
16 notices and newspapers to which they are sent and of the moneys
17 received to defray the cost of advertising and transmitting
18 advertising charges to newspaper, \$50.00.

19 No fees herein allowed shall be charged against the recipient of
20 any pension, bounty or allowance, for services of the surrogate and
21 the Probate Part of the Chancery Division of the Superior Court in
22 respect thereof, pursuant to N.J.S.3B:13-9 to 3B:13-14.
23 MISCELLANEOUS PROCEEDINGS

24 Proceedings relative to presumption of death, filing, entering and
25 recording, microfilming or photostating (exclusive of letters), with
26 additional fee for advertising, \$175.00.

27 Sale of land to pay debts (exclusive of advertising), \$175.00.

28 Sale of land in fulfillment of contract made by decedent,
29 \$175.00.

30 Sale of lands within one year, \$175.00.

31 Sale of minor's land, \$175.00.

32 Distribution, filing and entering complaint, recording,
33 microfilming or photostating, and filing judgment, \$175.00.

34 Filing of first paper in action in the Superior Court, Chancery
35 Division, Probate Part, \$175.00.

36 Filing of first paper in action in the Superior Court, Chancery
37 Division, Probate Part, pursuant to P.L. ,c. (C.)(pending
38 before the Legislature as this bill) \$175.00.

39 Filing of answering pleadings or other answering papers in
40 Superior Court, Chancery Division, Probate Part (First paper filed
41 by anyone other than Plaintiff), \$110.00.

42 Adoption of adults, filing and entering proceedings (all papers)
43 including one judgment, \$175.00.

44 Adoption of minors, filing and entering proceedings (all papers)
45 including one judgment, \$175.00.

46 Application for relief subsequent to final judgment in the
47 Superior Court, Chancery Division, Probate Part, \$25.00.

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16

- 1 Proceedings for the appointment of a conservator, with or
2 without jury trial, \$175.00.
- 3 Proceeding for the determination of incapacity and for the
4 appointment of a guardian for an alleged incapacitated person, with
5 or without jury trial, \$200.00.
- 6 Proceedings in connection with payment into court of proceeds
7 of a judgment in favor of a minor, in lieu of bond, pursuant to
8 N.J.S. 3B:15-16 and N.J.S.3B:15-17 (in addition to fees payable
9 under Letters of Guardianship), the following fees are payable upon
10 withdrawal of funds on deposit:
- 11 For each withdrawal including petitions and orders provided and
12 prepared by the surrogate for withdrawal of funds for court
13 approval:
- 14 Up to and including \$500.00, \$20.00.
15 From \$501.00 to and including \$1,000.00, \$25.00.
16 From \$1,001.00 to and including \$5,000.00, \$30.00.
17 From \$5,001.00 to and including \$10,000.00, \$35.00.
18 From \$10,001.00 to and including \$25,000, \$40.00.
19 From \$25,001.00 to and including \$50,000.00, \$60.00.
20 In excess of \$50,000.00, \$100.00.
- 21 MISCELLANEOUS CHARGES
- 22 Short certificates, \$5.00.
- 23 Validating short certificate within one year of issue of date,
24 \$3.00.
- 25 Subpoenas, each, \$25.00.
26 Marking true copies, subpoenas, each, \$3.00.
27 Marking true copies, orders to show cause, each, \$3.00.
28 Marking true copies of other papers, each, \$3.00.
29 Authorization of process, \$5.00.
30 Swearing each witness, \$2.00.
31 Adjournment or continuance, \$15.00.
32 Miscellaneous orders of court, first page, \$5.00.
33 For each additional page, \$5.00.
- 34 Recording, microfilming or photostating all papers not herein
35 provided for, \$5.00 for each page.
- 36 For making copies not otherwise provided for, \$3.00 for each
37 page.
- 38 Filing transcript of death certificate, \$5.00.
39 Power of attorney, per page \$5.00 plus \$5.00 for certified mail.
40 Search fee, per estate \$10.00.
- 41 Proceedings relative to appointment of a guardian ad litem,
42 \$25.00.
- 43 Renunciation by one person, filing, entering and recording, or
44 photostating, \$5.00. Each additional person, \$3.00.
- 45 Caveat, filing or withdrawing, \$25.00.
- 46 Combined refunding bond and release of not more than two
47 pages, filing, entering, microfilming and recording, or photostating,

1 \$10.00. \$5.00 for each additional page. Additional charge for
2 county clerk's certificate, \$5.00.

3 Release of not more than two pages of refunding bond and
4 release, \$10.00. \$5.00 for each additional page. Additional charge
5 for county clerk's certificate, \$5.00.

6 Assignments of legacy or interest, \$10.00 per page, plus \$5.00
7 where county clerk's certificate is necessary.

8 Filing all papers not herein provided for, \$5.00, if microfilming
9 process is used, \$5.00 per page.

10 Plain copy of two-page will, \$6.00.

11 Each additional page, \$3.00.

12 Filing of motions in the Superior Court, Chancery Division,
13 Probate Part, \$15.00.

14 Notice of appeal (trial court), \$10.00.

15 Minimum charge for all other papers or services in proceedings
16 in the Superior Court, Chancery Division, Probate Part, \$5.00.

17 3B:14-48 Service of Process by Surrogate, \$25.00.

18 Duplicating or copying of microfiche, digital tape, high density
19 disks, optically scanned and recorded materials or for any other
20 media used to record or preserve records, \$150.00 per medium
21 recorded.

22 Processing fee for returned check, \$20.00 plus bank fee.

23 (cf: P.L.2005, c.370, s.14)]¹

24

25 '[24.] 22.' Section 48 of P.L.2005, c.304 (3B:12-66.1) is
26 amended to read as follows:

27 48. Removal from New Jersey after Appointment of Guardian.

28 a. A guardian appointed in this State desiring to move to
29 another state with his ward who is a minor shall obtain an order
30 from the Superior Court of this State consenting to the **[ward's]**
31 minor's removal and if applicable, the guardian's discharge. The
32 Superior Court may transfer the guardianship to another state if the
33 court is satisfied that a transfer will serve the best interest of the
34 **[ward]** minor.

35 b. The **[ward's]** minor's removal and discharge of the guardian
36 shall be on such terms as the Superior Court deems necessary,
37 including requiring filing and settlement of the guardian's account
38 and filing of an exemplified copy of the order evidencing the other
39 state court's acceptance of jurisdiction over the guardianship and the
40 guardian.

41 (cf: P.L.2005, c.304, s.48)

42

43 '[25.] 23.' Section 49 of P.L.2005, c.304 (C.3B:12-66.2) is
44 amended to read as follows:

45 49. Transfer into New Jersey of Guardianship Established in
46 Another State.

1 a. A guardian or like fiduciary of a minor appointed in another
2 state may file a summary action in the Superior Court for the
3 transfer of the guardianship and the appointment as a guardian in
4 this State if domicile in this State is or will be established.

5 b. Notice of hearing shall be given to the **【ward】** minor and to
6 the persons who would be entitled to notice if the regular
7 procedures for appointment of a guardian under the New Jersey
8 Rules of Court were applicable.

9 c. The Superior Court shall grant an application for the transfer
10 of a guardianship established in another state unless the court
11 determines that the proposed guardianship is a collateral attack on
12 an existing or proposed guardianship or the transfer and
13 appointment would not be in the best interest of the **【ward】** minor.

14 d. An exemplified record of a court of competent jurisdiction
15 evidencing the original proceeding adjudicating the **【ward's】**
16 minor's incapacity and any amendment or modification orders
17 entered subsequent to the original judgment shall be filed with the
18 Superior Court. Subject to due process principles, full faith and
19 credit may be accorded to a court of another state's determination of
20 the **【ward's】** minor's incapacity. The Superior Court may fix the
21 rights, powers, and duties of the guardian that the court determines
22 are necessary to administer the **【ward's】** minor's person or estate,
23 or both person and estate, in this State.

24 e. The guardian shall give notice of the application to transfer
25 guardianship to the court of the other state.

26 (cf: P.L.2005, c.304, s.49)

27
28 ¹**【26.】** 24.¹ (New section) Transitional provision.

29 a. P.L. , c. (C.) (pending before the Legislature as
30 this bill) applies to guardianship and protective proceedings filed on
31 or after the effective date.

32 b. Sections 1 through 4 of P.L. ,c. (C.)(pending before the
33 Legislature as this bill); sections 6 through 8 of P.L. , c. (C.)
34 (pending before the Legislature as this bill); sections 17 through 21
35 of P.L. , c. (C.) (pending before the Legislature as this bill);
36 apply to proceedings begun before the effective date of
37 P.L. ,c. (C.) (pending before the Legislature as this bill),
38 regardless of whether a guardianship or protective order has been
39 issued.

40
41 ¹25. N.J.S.3B:12-29 is repealed.¹

42
43 ¹**【27.】** 26.¹ This act shall take effect on the 120th day after
44 enactment.

1

2

3

4

Establishes the “New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act.”

SENATE, No. 1755

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED MARCH 5, 2012

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Senator DAWN MARIE ADDIEGO

District 8 (Atlantic, Burlington and Camden)

Co-Sponsored by:

**Senators Bateman, Van Drew, Whelan, A.R.Bucco, Holzapfel, Singer,
B.Smith and T.Kean**

SYNOPSIS

Establishes the “New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/18/2012)

1 AN ACT concerning adult guardianship proceedings and revising
2 various parts of the statutory law and supplementing Title 3B of
3 the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) This act shall be known and may be cited as
9 the “New Jersey Adult Guardianship and Protective Proceedings
10 Jurisdiction Act.”

11
12 2. (New section) Scope of Act.

13 a. P.L. , c. (C.) (pending before the Legislature as
14 this bill) governs the exercise of jurisdiction over guardianship or
15 protective orders, as those terms are defined in P.L. , c.
16 (C.) (pending before the Legislature as this bill), when there
17 are interstate conflicts or uncertainty regarding this jurisdiction.
18 The act establishes uniform procedures that are intended to be used
19 to facilitate proceedings between courts in different states and to
20 resolve uncertainty about appropriate jurisdiction.

21 b. P.L. , c. (C.) (pending before the Legislature as
22 this bill) is not intended to and does not alter substantive law
23 pertaining to guardianship, conservatorship and protective
24 proceedings or arrangements and protective orders as defined
25 elsewhere in Title 3B of the New Jersey Statutes.

26
27 3. (New section) Definitions.

28 As used in P.L. , c. (C.) (pending before the Legislature
29 as this bill), unless otherwise defined:

30 a. “Adult” means an individual at least 18 years of age.

31 b. “Conservator” means a person appointed by the court to
32 administer the property of an adult, including a person appointed, as
33 appropriate, under N.J.S.3B:13A-1 et seq.

34 c. “Guardian” means a person appointed by the court to make
35 decisions regarding the person or property of an incapacitated adult,
36 including a person who has qualified as a guardian of the person or
37 estate, or both, of an incapacitated person pursuant to court
38 appointment in accordance with N.J.S.3B:12-1 et seq. or its
39 equivalent in a state other than New Jersey.

40 d. “Guardianship order” means an order appointing a guardian.

41 e. “Guardianship proceeding” means a judicial proceeding in
42 which an order for the appointment of a guardian is sought or has
43 been issued.

44 f. “Home state” means the state in which the respondent was
45 physically present, including any period of temporary absence, for

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 at least six consecutive months immediately before the filing of a
2 complaint for the appointment of a guardian or a protective order;
3 or if none, the state in which the respondent was physically present,
4 including any period of temporary absence, for at least six
5 consecutive months ending within the six months prior to the filing
6 of the complaint.

7 g. "Incapacitated person" means an adult for whom a guardian
8 has been appointed.

9 h. "Party" means the respondent, petitioner, guardian,
10 conservator, or any other person authorized by the court to
11 participate in a guardianship or protective proceeding.

12 i. "Protected person" means an adult for whom a protective
13 order has been issued.

14 j. "Protective order" means:

15 (1) An order related to an adult who has been declared
16 incapacitated by a court or for whom such a declaration is sought,
17 including but not limited to an arrangement or order related to
18 management of the incapacitated person's property, which is issued
19 pursuant to N.J.S.3B:12-1 and N.J.S.3B:12-2; or

20 (2) An order appointing a conservator, including but not limited
21 to an order which is issued pursuant to N.J.S.3B:13A-1 et seq; or

22 (3) An order to protect a "vulnerable adult" as that term is
23 defined in section 2 of P.L.1993, c.249 (C.52:27D-407), including
24 but not limited to an order which is issued pursuant to the "Adult
25 Protective Services Act," P.L.1993, c.249 (C.52:27D-406 et seq); or

26 (4) An order or arrangement, pursuant to N.J.S. 3B:12-1, for a
27 person for whom a declaration of incapacity is not sought.

28 k. "Protective proceeding" means a judicial proceeding in
29 which a protective order is sought or has been issued.

30 l. "Record" means information that is inscribed on a tangible
31 medium or that is stored in an electronic or other medium and is
32 retrievable in perceivable form.

33 m. "Respondent" means an adult for whom the appointment of a
34 guardian or the issuance of a protective order is sought.

35 n. "Significant-connection state" means a state, other than the
36 home state, with which a respondent has a significant connection
37 other than mere physical presence and in which substantial evidence
38 concerning the respondent is available.

39 o. "State" means a state of the United States, the District of
40 Columbia, Puerto Rico, the United States Virgin Islands, a federally
41 recognized Indian tribe, or any territory or insular possession
42 subject to the jurisdiction of the United States.

43
44 4. (New section) International application of the act.

45 A court of this State may treat a foreign country as if it were a
46 state for the purpose of applying all sections of the P.L. ,c.
47 (C.) (pending before the Legislature as this bill) except for

1 sections 19 and 20 of P.L. ,c. (C.) (pending before the
2 Legislature as this bill) pertaining to registration.

3

4 5. (New section) Which act governs; exclusive jurisdictional
5 basis; applicability.

6 P.L. , c. (C.) (pending before the Legislature as this bill)
7 governs jurisdiction of guardianship proceedings and provides the
8 exclusive jurisdictional basis for a court of this State to appoint a
9 guardian or issue a protective order. The appointment of a guardian
10 shall continue to be governed by N.J.S.3B:12-1 et seq. and the
11 appointment of a conservator shall continue to be governed by
12 N.J.S.3B:13A-1 et seq.

13 P.L. , c. (C.) (pending before the Legislature as this bill)
14 act shall be construed and applied in conjunction with N.J.S.3B:12-
15 1 et seq. and N.J.S.3B:13A-1 et seq.

16

17 6. (New section) Communication between courts.

18 a. A court of this State may communicate with a court of
19 another state concerning a proceeding arising pursuant to P.L. ,c.
20 (C.) (pending before the Legislature as this bill). The court may
21 allow the parties to participate in the communication in accordance
22 with the Rules Governing the Courts of the State of New Jersey.

23 b. Except as otherwise provided in subsection c., the court shall
24 make a record of the communication. The record may be limited to
25 the fact that the communication occurred.

26 c. Courts may communicate concerning schedules, calendars,
27 court records, and other administrative matters without making a
28 record.

29

30 7. (New section) Cooperation between courts.

31 a. In a guardianship or protective proceeding, a court of this
32 State may request the appropriate court of another state to do any of
33 the following:

34 (1) hold an evidentiary hearing;

35 (2) order a person in that state to produce evidence or give
36 testimony pursuant to procedures of that state;

37 (3) order that an evaluation or assessment be made of the
38 respondent;

39 (4) order any appropriate investigation of a person involved in a
40 proceeding;

41 (5) forward to the court of this State a certified copy of the
42 transcript or other record of a hearing under paragraph (1) or any
43 other proceeding, any evidence otherwise produced under paragraph
44 (2), and any evaluation or assessment prepared in compliance with
45 an order under paragraph (3) or (4);

46 (6) issue any order necessary to assure the appearance in the
47 proceeding of a person whose presence is necessary for the court to

1 make a determination, including the respondent or the incapacitated
2 or protected person; and

3 (7) issue an order authorizing the release of medical, financial,
4 criminal, or other relevant information in that state, including
5 protected health information which meets federal and state laws.

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

11
12 8. (New section) Taking testimony in another state;
13 documentary evidence.

14 a. A court of this State may permit a witness located in another
15 state to be deposed or to testify by any means permitted by the
16 Rules Governing the Courts of the State of New Jersey. A court of
17 this State shall cooperate with the court of another state in
18 designating an appropriate location for the deposition or testimony.

19 b. Documentary evidence transmitted from another state to a
20 court of this State may be admitted into evidence consistent with
21 the New Jersey Rules of Evidence.

22
23 9. (New section) Jurisdiction; determination.

24 a. A court of this State has jurisdiction to appoint a guardian or
25 issue a protective order for a respondent if:

26 (1) This State is the respondent's home state as defined in
27 P.L. , c. (C.) (pending before the Legislature as this bill);
28 or

29 (2) On the date the complaint is filed, this State is a significant-
30 connection state, as defined in P.L. , c. (C.) (pending
31 before the Legislature as this bill) and determined in accordance
32 with section 10 of P.L. , c. (C.) (pending before the
33 Legislature as this bill), and:

34 (a) the respondent either does not have a home state or a court of
35 the respondent's home state has declined to exercise jurisdiction
36 because this State is a more appropriate forum; or

37 (b) the respondent has a home state, a petition for an
38 appointment or order is not pending in a court of another state or
39 another significant-connection state, and, before this State's court
40 acts:

41 (i) a petition for an appointment or order is not filed in the
42 respondent's home state;

43 (ii) an objection to the court's jurisdiction is not filed by a person
44 required to be notified of the proceeding; and

45 (iii) the court concludes that it is an appropriate forum under the
46 factors set forth in section 13 of P.L. , c. (C.) (pending
47 before the Legislature as this bill);

1 (3) Although this State does not have jurisdiction under either
2 subsection a. or b. of this section, the home state and all significant-
3 connection states have declined to exercise jurisdiction because this
4 State is the more appropriate forum, and jurisdiction in this State is
5 consistent with the New Jersey and United States Constitutions; or

6 b. A court of this State may assume emergency jurisdiction
7 under section 11 of P.L. , c. (C.) (pending before the
8 Legislature as this bill).

9
10 10. (New section) Significant-connection state; determination.

11 In determining whether a respondent has a significant connection
12 with a particular state, the court shall consider:

13 a. the location of the respondent's family and other persons
14 required to be notified of the guardianship or protective proceeding;

15 b. the length of time the respondent at any time was physically
16 present in the state and the duration of any absence;

17 c. the location of the respondent's property; and

18 d. the extent to which the respondent has ties to the state such
19 as voting registration, state or local tax return filing, vehicle
20 registration, driver's license, social relationship, and receipt of
21 services.

22
23 11. (New section) Emergency jurisdiction.

24 a. A court of this State lacking jurisdiction under section 9 of
25 P.L. , c. (C.) (pending before the Legislature as this bill)
26 has emergency jurisdiction to do any of the following:

27 (1) appoint a guardian or issue a protective order in an
28 emergency, in accordance with subsection c. of section 12 of
29 P.L.2005, c.304 (C.3B:12-24.1) and this section, for a respondent
30 who is physically present in this State;

31 (2) appoint a guardian of real or tangible personal property
32 located in this State for which the respondent has an ownership
33 interest;

34 (3) issue a protective order with respect to real or tangible
35 personal property in this State; or

36 (4) appoint, under procedures similar to section 17 of P.L. , c.
37 (C.) (pending before the Legislature as this bill), a guardian or
38 conservator for an incapacitated or protected person for whom a
39 provisional order to transfer the proceeding from another state has
40 been issued.

41 b. If a petition for the appointment of a guardian or issuance of
42 a protective order in an emergency in accordance with subsection c.
43 of section 12 of P.L.2005, c.304 (C.3B:12-24.1) and this section is
44 brought in this State and this State was not the respondent's home
45 state on the date the petition was filed, the court shall dismiss the
46 proceeding at the request of the court of the home state, if any,
47 whether dismissal is requested before or after the emergency
48 appointment.

1 12. (New section) Exclusive and continuing jurisdiction.

2 Except as otherwise provided in section 11 of P.L. , c.
3 (C.) (pending before the Legislature as this bill), a court that
4 has appointed a guardian or issued a protective order consistent
5 with P.L. , c. (C.) (pending before the Legislature as this
6 bill) has exclusive and continuing jurisdiction over the proceeding
7 until the proceeding is terminated by the court, or the appointment
8 or order expires by its own terms.

9

10 13. (New section) Appropriate forum.

11 a. A court of this State having jurisdiction under section 9 of
12 P.L. , c. (C.)(pending before the Legislature as this bill) to
13 appoint a guardian or issue a protective order may decline to
14 exercise jurisdiction if it determines at any time that a court of
15 another state is a more appropriate forum.

16 b. If a court of this State declines to exercise jurisdiction under
17 subsection a., it shall either dismiss or stay the proceeding. The
18 court may impose any condition it deems just and proper, including
19 the condition that a complaint for the appointment of a guardian or
20 issuance of a protective order be filed promptly in another state.

21 c. In determining whether it is an appropriate forum, the court
22 shall consider all relevant factors, including:

23 (1) any expressed preference of the respondent;

24 (2) whether abuse, neglect, or exploitation of the respondent has
25 occurred or is likely to occur and which state could best protect the
26 respondent from the abuse, neglect, or exploitation;

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

29 (4) the distance of the respondent from the court of each state;

30 (5) the financial circumstances of the respondent's estate;

31 (6) the nature and location of the evidence;

32 (7) the ability of the court of each state to decide the issue
33 expeditiously and the procedures necessary to present evidence;

34 (8) the familiarity of the court of each state with the facts and
35 issues in the proceeding; and

36 (9) if an appointment were to be made, the court's ability to
37 monitor the conduct of the guardian or the conservator.

38

39 14. (New section) Jurisdiction declined by reason of conduct.

40 a. If at any time a court of this State determines that it acquired
41 jurisdiction to appoint a guardian or issue a protective order because
42 of unjustifiable conduct, the court may:

43 (1) decline to exercise jurisdiction;

44 (2) exercise jurisdiction for the limited purpose of fashioning an
45 appropriate remedy to ensure the health, safety, and welfare of the
46 respondent or the protection of the respondent's property or prevent
47 a repetition of the unjustifiable conduct, including staying the
48 proceeding until a complaint for the appointment of a guardian or

1 issuance of a protective order is filed in a court of another state
2 having jurisdiction; or

3 (3) continue to exercise jurisdiction after considering:

4 (a) the extent to which the respondent and all persons required to
5 be notified of the proceedings have acquiesced in the exercise of the
6 court's jurisdiction;

7 (b) whether it is a more appropriate forum than the court of any
8 other state under the factors set forth in subsection c. of section 13
9 of P.L. , c. (C.) (pending before the Legislature as this
10 bill); and

11 (c) whether the court of any other state would have jurisdiction
12 under factual circumstances in substantial conformity with the
13 jurisdictional standards of section 9 of P.L. , c. (C.)
14 (pending before the Legislature as this bill).

15 b. If a court of this State determines that it acquired jurisdiction
16 to appoint a guardian or issue a protective order because a party
17 seeking to invoke its jurisdiction engaged in unjustifiable conduct,
18 it may assess against that party necessary and reasonable expenses,
19 including attorneys' fees, investigative fees, court costs,
20 communication expenses, witness fees and expenses, and travel
21 expenses. The court may not assess fees, costs, or expenses of any
22 kind against this State or a governmental subdivision, agency, or
23 instrumentality of this State unless authorized by law other than
24 P.L. , c. (C.) (pending before the Legislature as this bill).

25

26 15. (New section) Notice of proceeding.

27 If this State was not the respondent's home state on the date a
28 complaint for the appointment of a guardian or issuance of a
29 protective order is filed in this State, notice of the complaint shall
30 be given, in the same manner as notice is required to be given in
31 this State, to the respondent and to the persons who would be
32 entitled to notice if the regular procedures for appointment of a
33 guardian or a conservator under the Rules Governing the Courts of
34 the State of New Jersey were applicable.

35

36 16. (New section) Proceedings in more than one state.

37 Except for a complaint for the appointment of a guardian or
38 issuance of a protective order in an emergency under paragraph (1)
39 of subsection a. of section 11 of P.L. , c. (C.) (pending
40 before the Legislature as this bill), or appointment of a guardian of
41 property or issuance of a protective order limited to property
42 located in this State under paragraphs (2) or (3) of subsection a. of
43 section 11 of P.L. , c. (C.) (pending before the Legislature
44 as this bill) if a complaint for the appointment of a guardian or
45 issuance of a protective order is filed in this State and in another
46 state and neither complaint has been dismissed or withdrawn, the
47 following shall apply:

1 a. A court of this State with jurisdiction under section 9 of
2 P.L. , c. (C.) (pending before the Legislature as this bill) may
3 proceed unless a court of another state acquires jurisdiction under
4 similar provisions before the appointment or issuance of the order.

5 b. A court of this State without jurisdiction under section 9 of
6 P.L. , c. (C.) (pending before the Legislature as this bill),
7 whether at the time the complaint is filed or at any time before the
8 appointment or issuance of the order, shall stay the proceeding and
9 communicate with the court of another state. If the court in the
10 other state has jurisdiction, the court of this State shall dismiss the
11 complaint unless the court in the other state determines that the
12 court of this State is a more appropriate forum.

13
14 17. (New section) Transfer of guardianship or conservatorship to
15 another state.

16 a. A guardian or conservator appointed in this State may
17 petition the court to transfer the guardianship or conservatorship to
18 another state.

19 b. Notice of a petition for transfer shall be given to the persons
20 that would be entitled to notice of a petition in this State for the
21 appointment of a guardian or conservator.

22 c. On the court's own motion or upon request of the guardian
23 or conservator, or other person required to be notified of the
24 complaint, the court shall hold a hearing on a petition to transfer.

25 d. The court shall issue an order provisionally granting a
26 petition to transfer a guardianship and direct the guardian to petition
27 for guardianship in the other state if the court is satisfied that the
28 guardianship will be accepted by the court of the other state and the
29 court finds that:

30 (1) in the case of a guardianship of the person, the incapacitated
31 person is physically present in or is reasonably expected to move
32 permanently to the other state, or in the case of a guardianship of
33 property, the incapacitated person is physically present in or is
34 reasonably expected to move permanently to, or has a significant
35 connection to, the other state; and

36 (2) an objection to the transfer has not been made or, that the
37 transfer would not be contrary to the interests of the incapacitated
38 person; and

39 (3) in the case of a guardianship of the person, plans for care and
40 services for the incapacitated person in the other state are
41 reasonable and sufficient, or in the case of a guardianship of
42 property, adequate arrangements are made for management of the
43 incapacitated person's property.

44 e. The court shall issue a provisional order granting a transfer a
45 conservatorship and shall direct the conservator to petition for
46 conservatorship in the other state if the court is satisfied that the
47 conservatorship will be accepted by the court of the other state and
48 the court finds that:

1 (1) the protected person is physically present in or is reasonably
2 expected to move permanently to the other state, or the protected
3 person has a significant connection to the other state considering the
4 factors in section 10 of P.L. , c. (C.) (pending before the
5 Legislature as this bill);

6 (2) an objection to the transfer has not been made or, that the
7 transfer would not be contrary to the interests of the incapacitated
8 person; and

9 (3) adequate arrangements will be made for management of the
10 protected person's property.

11 f. The court shall issue a final order confirming the transfer
12 and terminating the guardianship or conservatorship upon receipt
13 of:

14 (1) a provisional order accepting the guardianship or
15 conservatorship from the court to which the guardianship or
16 conservatorship is to be transferred under provisions similar to
17 section 18 of P.L. , c. (C.) (pending before the Legislature
18 as this bill); and

19 (2) the documents required to terminate a guardianship or
20 conservatorship in this State.

21
22 18. (New section) Accepting guardianship or conservatorship
23 transferred from another state.

24 a. To confirm transfer of a guardianship or conservatorship to
25 this State under provisions similar to section 17 of P.L. , c.
26 (C.) (pending before the Legislature as this bill), the guardian
27 or conservator in the other state shall file a complaint in the court of
28 this State to accept the guardianship of the person or the person's
29 property, or both, or the conservatorship. The complaint shall
30 include a certified copy of the other state's provisional order of
31 transfer.

32 b. Notice of a complaint under this section shall be given, in
33 the same manner as notice is required to be given in this State, to
34 those persons that would be entitled to notice if the complaint were
35 for the appointment of a guardian or issuance of a protective order
36 in both the transferring state and this State.

37 c. On the court's own motion or upon request of the guardian
38 or of the conservator, or other person required to be notified of the
39 proceeding, the court shall hold a hearing on a complaint filed
40 pursuant to this section.

41 d. The court shall issue an order provisionally granting relief
42 under this section unless:

43 (1) an objection is made and the court determines that transfer of
44 the proceeding would be contrary to the interests of the
45 incapacitated or protected person; or

46 (2) the guardian or conservator is ineligible for appointment in
47 this State.

1 e. The final order accepting the proceeding and appointing the
2 guardian or conservator from the other state as guardian of the
3 person or property, or both, or conservator in this State shall be
4 issued upon the receipt by this State's court of a final order issued
5 under provisions similar to section 17 of P.L. , c. (C.)
6 (pending before the Legislature as this bill) transferring the
7 proceeding to this State.

8 f. Upon application of a party or upon the court's own motion,
9 the court shall determine whether the guardianship of the person or
10 property, or both, or the conservatorship needs to be modified to
11 conform to the law of this State.

12 g. In granting an application under this section, the court shall
13 recognize a guardianship or conservatorship order from the other
14 state, including the determination of the incapacitated person's
15 incapacity and the appointment of the guardian of the person or
16 property, or both, or of the conservator.

17 h. The denial by a court of this State of an application to accept
18 a guardianship or conservatorship transferred from another state
19 does not affect the ability of the guardian or conservator to seek
20 appointment as guardian of the person or property, or both, in this
21 State under N.J.S.3B:12-25 or as conservator under N.J.S.3B:13A-1
22 et seq., if the court has jurisdiction to make an appointment other
23 than by reason of the provisional order of transfer.

24
25 19. (New section) Registration of guardianship or
26 conservatorship orders.

27 If a guardian has been appointed in another state and an
28 application for the appointment of a guardian of the person or
29 property, or both, is not pending in this State, or if a conservator has
30 been appointed in another state and an application for the
31 appointment of a conservator is not pending in this State, the
32 guardian or conservator appointed in the other state, after giving
33 notice to the appointing court of an intent to register, may register
34 the guardianship or conservatorship order in this State by filing in
35 the Superior Court, Probate Division, in any appropriate county of
36 this State, certified copies of the order and letters of office, and of
37 any bond, as appropriate. For purposes of a guardian of the person,
38 an appropriate county is any county where the guardian seeks to
39 maintain an action or proceeding on behalf of the incapacitated
40 person; for purposes of a guardian of the property or of a
41 conservatorship, an appropriate county is the county where the
42 property belonging to the incapacitated person or conservatee is
43 located.

44
45 20. (New section) Effect of registration.

46 a. Upon registration of a guardianship or protective order from
47 another state, the guardian or conservator may exercise in this State
48 all powers authorized in the order of appointment except as

1 prohibited under the laws of this State, including maintaining
2 actions and proceedings in this State and, if the guardian or
3 conservator is not a resident of this State, subject to any conditions
4 imposed upon nonresident parties.

5 b. A court of this State may grant any relief available under
6 P.L. , c. (C.) (pending before the Legislature as this bill)
7 and other law of this State to enforce a registered order.

8 c. A court of this State shall recognize and enforce, but may not
9 modify, except in accordance with section 18 of P.L. , c.
10 (C.) (pending before the Legislature as this bill), a registered
11 order.

12

13 21. (New section) Uniformity of application and construction.

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

17

18 22. N.J.S.3B:12-29 is amended to read as follows:

19 3B:12-29. Appointment of guardian of the property for
20 nonresident incapacitated **[person]** minor.

21 When a nonresident minor has been or shall be found to be an
22 incapacitated person under the laws of the state or country wherein
23 the nonresident resides, the Superior Court may appoint a guardian
24 for the nonresident's property in this State.

25 (cf: P.L.2005, c.304, s.17)

26

27 23. N.J.S.22A:2-30 is amended to read as follows:

28 22A:2-30. Fees of surrogate and deputy clerk of the Superior
29 Court. Fees for services of the surrogate and deputy clerk of the
30 Superior Court enumerated below shall be as follows and shall be
31 for the use of the county in which the fees are collected:

32 **PROBATE OF WILLS AND COPIES**

33 Probate of a will of not more than two pages, \$100.00.

34 Each additional page, \$ 5.00.

35 The above fee is for all services in preparation and execution of
36 complaint, filing proof of death, deposition of one witness,
37 qualification of executor, filing power of attorney, surrogate's
38 certificate, judgment for probate, letters testamentary, plain copy of
39 will, binding, recording, microfilming or photostating, comparing,
40 docketing, report to the Division of Taxation in the Department of
41 the Treasury, report and transmission to the Clerk of the Superior
42 Court.

43 Probate of will of not more than two pages without letters,
44 \$50.00. Each additional page, \$ 5.00. This fee is for the same
45 services as are enumerated in the preceding paragraph, except
46 letters, surrogate's certificate and qualification of executor.

47 Probate of each codicil, not exceeding one page, \$25.00.

48 Where codicil requires an additional witness, \$5.00.

1 To reopen probate proceedings for qualification of executor or
2 taking proof of extra witness, \$25.00.

3 One witness in the above probate proceedings, no charge.

4 Each additional witness, \$5.00.

5 Recording and comparing, microfilming or photostating, each
6 additional page of will or codicil, \$5.00.

7 Filing, entering, issuing and recording, microfilming or
8 photostating, proceedings in commission for deposition of foreign
9 witness to a will or codicil, \$35.00. Plain extra copy of will, \$3.00
10 for each page.

11 Certified extra copy of will, \$5.00 for each page, plus \$5.00 for
12 certificate.

13 Certified copy of will with proofs for New Jersey county, not
14 exceeding two pages including will and codicil, \$50.00. For pages
15 in excess of two, \$5.00 for each page.

16 Wills filed but not probated (as, where there are no assets),
17 \$10.00 for first two pages, \$5.00 for each additional page, \$5.00 for
18 cover letter stating no assets, \$5.00 for death certificate.

19 Exemplifying will for another state, not exceeding two pages
20 including will and codicil, plus cost of certificate of Secretary of
21 State when requisite, \$75.00 (not including \$9.00 fee for
22 exemplified forms). For pages in excess of two, \$5.00 for each
23 page.

24 Recording, microfilming or photostating, docketing, indexing,
25 filing and reporting to the Division of Taxation in the Department
26 of the Treasury an exemplified copy of will and probate
27 proceedings from another state, \$5.00 for each page.

28 Recording, microfilming or photostating, docketing, indexing
29 and filing a certified copy of will with proofs from New Jersey,
30 \$5.00 for each page.

31 Recording, microfilming or photostating certified transcripts of
32 wills admitted to probate and probate proceedings or letters of
33 administration and administration proceedings granted by the
34 Superior Court, \$5.00 for each page.

35 **LETTERS OF TRUSTEESHIP**

36 Acceptance of trustee and letters of trusteeship, including one
37 certificate, \$50.00.

38 **LETTERS OF ADMINISTRATION**

39 General administration, including preparation and execution of
40 complaint, bond, surety affidavits, necessary recording,
41 microfilming or photostating, indexing, filing, report to the Division
42 of Taxation, including power of attorney and death certificate, in
43 the Department of the Treasury and the Clerk of the Superior Court
44 and original letters including authorization to accept service of
45 process and death certificate, \$125.00, and for other documents,
46 \$5.00 per page.

47 Administration ad prosequendum, \$50.00, and for other
48 documents, \$5.00 per page.

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1 Exemplifying administration, \$75.00.

2 Certified copy of administration, \$50.00.

3 Affidavits of surviving spouse or next of kin where the value of
4 the real and personal assets of the estate does not exceed
5 \$20,000.00 or \$10,000.00, respectively, \$5.00 for each \$100.00 or
6 part thereof. Total cost shall not exceed \$50.00. This fee is waived
7 where the value of the assets of the estate does not exceed \$200.00.

8 **LETTERS OF GUARDIANSHIP**

9 Granting letters of guardianship, acceptance of guardianship and
10 filing of power of attorney, \$50.00.

11 Affidavits of estates of minors where value of real and personal
12 estate does not exceed \$5,000.00, \$5.00 per page.

13 Miscellaneous petitions and orders, \$5.00 per page.

14 **INVENTORIES**

15 For all services in appointment of appraisers, \$25.00.

16 Filing, entering and recording, microfilming or photostating,
17 inventory and appraisal, not exceeding one page, and affidavits
18 of appraisers and executor, \$25.00.

19 For each additional page, \$5.00.

20 **ACCOUNTING**

21 For filing complaint and one page of accounting, \$175.00.

22 For auditing, stating, reporting and recording, microfilming or
23 photostating, accounts of executors, administrators, guardians,
24 trustees and assignees, including drawing judgment, but exclusive
25 of advertising costs:

26 In estates up to and including \$2,000.00, no additional fee.

27 In estates from \$2,001.00 to and including \$10,000.00, \$100.00.

28 In estates from \$10,001.00 to and including \$30,000.00, \$125.00.

29 In estates from \$30,001.00 to and including \$65,000.00, \$150.00.

30 In estates from \$65,001.00 to and including \$200,000.00, 3/10 of
31 1% but not less than \$300.00.

32 In estates exceeding \$200,000.00--4/10 of 1%, but not less than
33 \$400.00.

34 For each page of accounting in excess of one, \$5.00.

35 In computing the amount of an estate for the purpose of fixing
36 the fees of a surrogate for auditing and reporting the account, the
37 balance from the prior account shall be excluded.

38 For preparing notice of settlement of accounts and copies of the
39 same, forwarding notice to newspaper, with directions as to
40 publication, obtaining proofs of publication, keeping a record of
41 notices and newspapers to which they are sent and of the moneys
42 received to defray the cost of advertising and transmitting
43 advertising charges to newspaper, \$50.00.

44 No fees herein allowed shall be charged against the recipient of
45 any pension, bounty or allowance, for services of the surrogate and
46 the Probate Part of the Chancery Division of the Superior Court in
47 respect thereof, pursuant to N.J.S.3B:13-9 to 3B:13-14.

48 **MISCELLANEOUS PROCEEDINGS**

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1 Proceedings relative to presumption of death, filing, entering and
2 recording, microfilming or photostating (exclusive of letters), with
3 additional fee for advertising, \$175.00.

4 Sale of land to pay debts (exclusive of advertising), \$175.00.

5 Sale of land in fulfillment of contract made by decedent,
6 \$175.00.

7 Sale of lands within one year, \$175.00.

8 Sale of minor's land, \$175.00.

9 Distribution, filing and entering complaint, recording,
10 microfilming or photostating, and filing judgment, \$175.00.

11 Filing of first paper in action in the Superior Court, Chancery
12 Division, Probate Part, \$175.00.

13 Filing of first paper in action in the Superior Court, Chancery
14 Division, Probate Part, pursuant to P.L. ,c. (C.)(pending
15 before the Legislature as this bill) \$175.00.

16 Filing of answering pleadings or other answering papers in
17 Superior Court, Chancery Division, Probate Part (First paper filed
18 by anyone other than Plaintiff), \$110.00.

19 Adoption of adults, filing and entering proceedings (all papers)
20 including one judgment, \$175.00.

21 Adoption of minors, filing and entering proceedings (all papers)
22 including one judgment, \$175.00.

23 Application for relief subsequent to final judgment in the
24 Superior Court, Chancery Division, Probate Part, \$25.00.

25 Proceedings for the appointment of a conservator, with or
26 without jury trial, \$175.00.

27 Proceeding for the determination of incapacity and for the
28 appointment of a guardian for an alleged incapacitated person, with
29 or without jury trial, \$200.00.

30 Proceedings in connection with payment into court of proceeds
31 of a judgment in favor of a minor, in lieu of bond, pursuant to
32 N.J.S. 3B:15-16 and N.J.S.3B:15-17 (in addition to fees payable
33 under Letters of Guardianship), the following fees are payable upon
34 withdrawal of funds on deposit:

35 For each withdrawal including petitions and orders provided and
36 prepared by the surrogate for withdrawal of funds for court
37 approval:

38 Up to and including \$500.00, \$20.00.

39 From \$501.00 to and including \$1,000.00, \$25.00.

40 From \$1,001.00 to and including \$5,000.00, \$30.00.

41 From \$5,001.00 to and including \$10,000.00, \$35.00.

42 From \$10,001.00 to and including \$25,000, \$40.00.

43 From \$25,001.00 to and including \$50,000.00, \$60.00.

44 In excess of \$50,000.00, \$100.00.

45 MISCELLANEOUS CHARGES

46 Short certificates, \$5.00.

47 Validating short certificate within one year of issue of date,
48 \$3.00.

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- 1 Subpoenas, each, \$25.00.
- 2 Marking true copies, subpoenas, each, \$3.00.
- 3 Marking true copies, orders to show cause, each, \$3.00.
- 4 Marking true copies of other papers, each, \$3.00.
- 5 Authorization of process, \$5.00.
- 6 Swearing each witness, \$2.00.
- 7 Adjournment or continuance, \$15.00.
- 8 Miscellaneous orders of court, first page, \$5.00.
- 9 For each additional page, \$5.00.
- 10 Recording, microfilming or photostating all papers not herein
- 11 provided for, \$5.00 for each page.
- 12 For making copies not otherwise provided for, \$3.00 for each
- 13 page.
- 14 Filing transcript of death certificate, \$5.00.
- 15 Power of attorney, per page \$5.00 plus \$5.00 for certified mail.
- 16 Search fee, per estate \$10.00.
- 17 Proceedings relative to appointment of a guardian ad litem,
- 18 \$25.00.
- 19 Renunciation by one person, filing, entering and recording, or
- 20 photostating, \$5.00. Each additional person, \$3.00.
- 21 Caveat, filing or withdrawing, \$25.00.
- 22 Combined refunding bond and release of not more than two
- 23 pages, filing, entering, microfilming and recording, or photostating,
- 24 \$10.00. \$5.00 for each additional page. Additional charge for
- 25 county clerk's certificate, \$5.00.
- 26 Release of not more than two pages of refunding bond and
- 27 release, \$10.00. \$5.00 for each additional page. Additional charge
- 28 for county clerk's certificate, \$5.00.
- 29 Assignments of legacy or interest, \$10.00 per page, plus \$5.00
- 30 where county clerk's certificate is necessary.
- 31 Filing all papers not herein provided for, \$5.00, if microfilming
- 32 process is used, \$5.00 per page.
- 33 Plain copy of two-page will, \$6.00.
- 34 Each additional page, \$3.00.
- 35 Filing of motions in the Superior Court, Chancery Division,
- 36 Probate Part, \$15.00.
- 37 Notice of appeal (trial court), \$10.00.
- 38 Minimum charge for all other papers or services in proceedings
- 39 in the Superior Court, Chancery Division, Probate Part, \$5.00.
- 40 3B:14-48 Service of Process by Surrogate, \$25.00.
- 41 Duplicating or copying of microfiche, digital tape, high density
- 42 disks, optically scanned and recorded materials or for any other
- 43 media used to record or preserve records, \$150.00 per medium
- 44 recorded.
- 45 Processing fee for returned check, \$20.00 plus bank fee.
- 46 (cf: P.L.2005, c.370, s.14)

1 24. Section 48 of P.L.2005, c.304 (3B:12-66.1) is amended to
2 read as follows:

3 48. Removal from New Jersey after Appointment of Guardian.

4 a. A guardian appointed in this State desiring to move to
5 another state with his ward who is a minor shall obtain an order
6 from the Superior Court of this State consenting to the **[ward's]**
7 minor's removal and if applicable, the guardian's discharge. The
8 Superior Court may transfer the guardianship to another state if the
9 court is satisfied that a transfer will serve the best interest of the
10 **[ward]** minor.

11 b. The **[ward's]** minor's removal and discharge of the guardian
12 shall be on such terms as the Superior Court deems necessary,
13 including requiring filing and settlement of the guardian's account
14 and filing of an exemplified copy of the order evidencing the other
15 state court's acceptance of jurisdiction over the guardianship and the
16 guardian.

17 (cf: P.L.2005, c.304, s.48)

18

19 25. Section 49 of P.L.2005, c.304 (C.3B:12-66.2) is amended to
20 read as follows:

21 49. Transfer into New Jersey of Guardianship Established in
22 Another State.

23 a. A guardian or like fiduciary of a minor appointed in another
24 state may file a summary action in the Superior Court for the
25 transfer of the guardianship and the appointment as a guardian in
26 this State if domicile in this State is or will be established.

27 b. Notice of hearing shall be given to the **[ward]** minor and to
28 the persons who would be entitled to notice if the regular
29 procedures for appointment of a guardian under the New Jersey
30 Rules of Court were applicable.

31 c. The Superior Court shall grant an application for the transfer
32 of a guardianship established in another state unless the court
33 determines that the proposed guardianship is a collateral attack on
34 an existing or proposed guardianship or the transfer and
35 appointment would not be in the best interest of the **[ward]** minor.

36 d. An exemplified record of a court of competent jurisdiction
37 evidencing the original proceeding adjudicating the **[ward's]**
38 minor's incapacity and any amendment or modification orders
39 entered subsequent to the original judgment shall be filed with the
40 Superior Court. Subject to due process principles, full faith and
41 credit may be accorded to a court of another state's determination of
42 the **[ward's]** minor's incapacity. The Superior Court may fix the
43 rights, powers, and duties of the guardian that the court determines
44 are necessary to administer the **[ward's]** minor's person or estate,
45 or both person and estate, in this State.

46 e. The guardian shall give notice of the application to transfer

1 guardianship to the court of the other state.

2 (cf: P.L.2005, c.304, s.49)

3

4 26. (New section) Transitional provision.

5 a. P.L. , c. (C.) (pending before the Legislature as
6 this bill) applies to guardianship and protective proceedings filed on
7 or after the effective date.

8 b. Sections 1 through 4 of P.L. ,c. (C.)(pending before the
9 Legislature as this bill); sections 6 through 8 of P.L. , c. (C.)
10 (pending before the Legislature as this bill); sections 17 through 21
11 of P.L. , c. (C.) (pending before the Legislature as this bill);
12 apply to proceedings begun before the effective date of P.L. , c.
13 (C.) (pending before the Legislature as this bill), regardless of
14 whether a guardianship or protective order has been issued.

15

16 27. This act shall take effect on the 120th day after enactment.

17

18

19

STATEMENT

20

21 This bill enacts the "New Jersey Adult Guardianship and
22 Protective Proceedings Jurisdiction Act," recommended by the New
23 Jersey Law Revision Commission in its February 18, 2011 Final
24 Report. This bill is modeled after "Uniform Adult Guardianship
25 and Protective Proceedings Jurisdiction Act" (UAGPPJA) approved
26 in 2007 by the National Conference of Commissioners on Uniform
27 State Laws which has been adopted in 19 states and the District of
28 Columbia.

29 This bill would establish uniform procedures designed to address
30 interstate conflicts regarding adult guardianship issues. The purpose
31 of the bill is to provide a mechanism for consistent resolution of
32 those cases where an adult is subject to guardianship proceedings in
33 more than one state or in a state and another country, where he has
34 contacts or property in each place. The bill sets forth procedures
35 with regard to sharing of the information between courts concerning
36 guardianship and protective proceedings. Such information
37 includes: testimony; evidence; evaluations and assessments;
38 transcripts; and medical, financial, criminal or other relevant
39 information.

40 For consistency within the statutes, this bill will also amend two
41 recent enactments, sections 48 and 49 of P.L.2005, c.304 (C.3B:12-
42 66.1 and C.3B:12-66.2), concerning transfer of guardianship
43 services between states, to make these sections applicable to only
44 minors.

Jurisdiction

45 Under the provisions of the bill, a court of this State would have
46 jurisdiction to appoint a guardian or issue a protective order for an
47 individual for whom the appointment of a guardian or the issuance
48

1 of a protective order is sought (*known as respondent*) if: (1) this
2 State is that person's "home state"; or (2) on the date the petition is
3 filed this State is a state with a "significant connection" ; or (3) if
4 the home state and all significant connection states have declined
5 jurisdiction. The bill defines "home state" as the state in which the
6 respondent was physically present, including any period of
7 temporary absence, for at least six consecutive months *immediately*
8 *before the filing*; or if none, the state in which the respondent was
9 physically present, including any period of temporary absence, for
10 at least six consecutive months *ending within the six months* prior to
11 the filing of the petition. A state with a "significant connection" is a
12 state, other than a home state, with which a respondent has a
13 significant connection other than mere physical presence and where
14 substantial evidence concerning the respondent is available. In
15 order to determine whether a significant connection exists, the court
16 must consider the following factors: (a) the location of the
17 respondent's family and other persons required to be notified of the
18 guardianship or protective proceeding; (b) the length of time the
19 respondent at any time was physically present in the state and the
20 duration of any absence; (c) the location of the respondent's
21 property; and (d) the extent to which the respondent has ties to the
22 state such as voting registration, state or local tax return filing,
23 vehicle registration, driver's license, social relationship, and receipt
24 of services.

25 *Communication and cooperation between Courts*

26 This bill provides that a court of this State may communicate
27 with a court of another state concerning a proceeding arising under
28 this bill. The court may allow the parties to participate in the
29 communication in accordance with the Rules Governing the Courts
30 of the State of New Jersey. The record may be limited to the fact
31 that the communication occurred. Courts may communicate
32 concerning schedules, calendars, court records, and other
33 administrative matters without making a record.

34 This bill insures communication between courts by providing
35 that a court in this State may request the out-of-state court to hold
36 evidentiary hearings, order evaluations or assessments be made,
37 order a person in that state to produce evidence or give testimony,
38 and order any other appropriate investigation. The out-of-state court
39 would forward a certified copy of the transcript or other record of
40 the hearing, any evidence produced, and any evaluation or
41 assessment prepared in compliance with an order. The court in this
42 State may request the out-of-state court to issue any order necessary
43 to assure the appearance in the proceeding of a person whose
44 presence is necessary for the court to make a determination. The bill
45 also provides that the court in this State can request the out-of-state
46 court to issue an order authorizing the release of any medical,
47 financial, criminal, or other relevant information in that state,
48 including protected health information which meets federal and

1 state privacy laws. The bill also provides that an out of state court
2 in which a guardianship or protective proceeding is pending
3 requests assistance, a court of this State has jurisdiction for the
4 limited purpose of granting the request or making reasonable efforts
5 to comply with the request.

6 *Testimony and Documentary Evidence*

7 The bill provides that a court of this State may permit a witness
8 located in another state to be deposed or to testify by any means
9 permitted by the Rules Governing the Courts of the State of New
10 Jersey. A court of this State would cooperate with the court of
11 another state in designating an appropriate location for the
12 deposition or testimony. Documentary evidence transmitted from
13 another state to a court of this State may be admitted into evidence
14 consistent with the New Jersey Rules of Evidence.

15

16 *Emergency Jurisdiction*

17 Under the bill, a court would have emergency jurisdiction even if
18 it lacks “home state” or “significant connection” jurisdiction.
19 Emergency jurisdiction allows the court to: (1) appoint a guardian
20 or issue a protective order in an emergency, in accordance with
21 subsection c of section 12 of P.L.2005, c.304 (C.3B:12-24.1), for a
22 respondent who is physically present in this State; (2) appoint a
23 guardian of real or tangible personal property located in this State
24 for which the respondent has an ownership interest; (3) issue a
25 protective order with respect to real or tangible personal property in
26 this State; or (4) appoint a guardian or conservator for an
27 incapacitated or protected person for whom a provisional order to
28 transfer the proceeding from another state has been issued. The bill
29 provides that if a petition for the appointment of a guardian or
30 issuance of a protective order in an emergency is brought in this
31 State and this State was not the respondent’s home state on the date
32 the petition was filed, the court shall dismiss the proceeding at the
33 request of the court of the home state, if any, whether dismissal is
34 requested before or after the emergency appointment.

35 *Exclusive and Continuing Jurisdiction*

36 The bill provides that a court that has appointed a guardian or
37 issued a protective order consistent with the provisions of the act
38 would have exclusive and continuing jurisdiction over the
39 proceedings until the proceeding is terminated by the court or the
40 appointment or order expires on its own terms. This section
41 exempts a court which has attained emergency jurisdiction.

42 *Appropriate Forum*

43 Under the provisions of the bill, a court of this State which has
44 jurisdiction under the act may decline to exercise jurisdiction if it
45 determines at any time that a court of another state is a more
46 appropriate forum. Once jurisdiction is declined, the court shall
47 either dismiss or stay the proceeding. The court may impose any
48 condition it deems just and proper, including the condition that a

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

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

18 *Decline of Jurisdiction by Reason of Conduct*

19 If at any time a court of this State determines that it acquired
20 jurisdiction to appoint a guardian or issue a protective order because
21 of unjustifiable conduct, the court may: (1) decline to exercise
22 jurisdiction; (2) exercise jurisdiction for the limited purpose to
23 ensure the health, safety, and welfare of the respondent or the
24 protection of the respondent's property or prevent a repetition of the
25 unjustifiable conduct; or (3) continue to exercise jurisdiction.

26 If the court determines that it acquired jurisdiction because a
27 party seeking to invoke its jurisdiction engaged in unjustifiable
28 conduct, it may assess against that party necessary and reasonable
29 expenses, including attorneys' fees, investigative fees, court costs,
30 communication expenses, witness fees and expenses, and travel
31 expenses. However, the court may not assess fees, costs, or
32 expenses of any kind against the state.

33 *Proceedings in more than one state*

34 If the court has jurisdiction, the court may proceed unless a court
35 of another state acquires jurisdiction prior to the first court making
36 an appointment or issuing a protective order. If the court does not
37 have jurisdiction, whether at the time the complaint is filed or at
38 any time before the appointment or issuance of the order, the court
39 would stay the proceeding and communicate with the other court. If
40 the court in the other state has jurisdiction, the court of this State
41 would dismiss the complaint unless the court in the other state
42 determines that the court of this State is a more appropriate forum.

43 *Transfer of Guardianship or Conservatorship to Another State*

44 A guardian or conservator appointed in this State may petition
45 the court, under the provisions of the bill, to transfer the
46 guardianship or conservatorship to another state. Notice of the
47 petition to transfer would be given to those individuals required to

1 be given notice of a guardianship proceeding. The court is required
2 to hold a hearing on a petition to transfer.

3 Under the provisions of the bill, the court issues an order
4 provisionally granting petition to transfer a guardianship or a
5 conservatorship if it finds that: (1) the person is physically present
6 in or is reasonably expected to move permanently to the other state
7 or the person has a significant connection to the other state; (2) an
8 objection to the transfer has not been made or, that the transfer
9 would not be contrary to the interests of the incapacitated person;
10 and (3) plans for care and services or management of the person's
11 property in the other state are reasonable and sufficient.

12 A final order is issued confirming the transfer upon receipt of a
13 provisional order and receipt of the documents required to terminate
14 a guardianship or conservatorship in this State.

15

16 *Accepting Guardianship or Conservatorship Transferred from*
17 *Another State*

18 To confirm transfer of a guardianship or conservatorship to this
19 State, the guardian or conservator in the other state is required to
20 petition the court to accept the guardianship of the person or the
21 person's property, or both, or the conservatorship. Notice is
22 required to be given to all those parties who would receive notice in
23 a guardianship or conservator appointment proceeding. Under the
24 provisions of the bill, the court holds a hearing to provisionally
25 grant relief unless: an objection is made and the court determines
26 that transfer of the proceeding would be contrary to the interests of
27 the incapacitated or protected person; or the guardian or conservator
28 is ineligible for appointment in this State.

29 A final order is issued upon the receipt final order which
30 transferred the proceeding to this State.

31 The bill also provides that the court, upon its own motion or
32 upon an application of a party, can determine whether the
33 guardianship or the conservatorship needs to be modified.

34 The court may either grant or deny the petition. A denial does
35 not affect the ability of the guardian or conservator to seek
36 appointment pursuant to the laws of this State, if the court has
37 jurisdiction to make an appointment other than by reason of the
38 provisional order of transfer.

39 *Registration of Guardianship or Conservatorship Orders and its*
40 *Effect*

41 If a guardian has been appointed in another state and an
42 application for guardianship or conservatorship is not pending, that
43 guardian or conservator may register the order in this State by filing
44 with the court certified copies of the order and letters of office, and
45 of any bond, as appropriate.

46 Once the orders have been registered, the guardian or
47 conservator may exercise in this State all powers authorized in the
48 order of appointment except as prohibited under the laws of this

1 State, including maintaining actions and proceedings in this State
2 and, if the guardian or conservator is not a resident of this State,
3 subject to any conditions imposed upon nonresident parties. A court
4 of this State can grant any relief available under this bill and other
5 law of this State to enforce a registered order. However, a court of
6 this State cannot modify an order.

7 *N.J.S.A.3B:12-29*

8 The bill amends N.J.S.A.3B:12-29, concerning appointment of
9 guardian of the property for a non-resident, to make the provisions
10 of that section apply to minors.

11 *Guardianship Fee*

12 The bill would provide for \$175 fee for a filing under the
13 provisions of this bill.

14 *N.J.S.A.3B:12-66.1 and N.J.S.A.3B:12-66.2*

15 This bill amends N.J.S.A.3B:12-66.1 and N.J.S.A.3B:12-66.2 to
16 have the provisions of these sections apply to only minors. As
17 enacted in 2005, these sections established procedures for the
18 transfer of guardianship services when a guardian in this State is
19 seeking to move to another state or a guardian in another state is
20 seeking to transfer services into New Jersey.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 1755

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 17, 2012

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 1755.

As reported, this amended bill establishes the “New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act,” recommended by the New Jersey Law Revision Commission in its February 18, 2011 Final Report. The bill is modeled after the “Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act” approved in 2007 by the National Conference of Commissioners on Uniform State Laws. To date, this model act has been adopted in more than thirty states.

This bill would establish uniform procedures to resolve interstate conflicts and uncertainty in cases when an adult is subject to guardianship proceedings in more than one state, or in a state and another country, where the adult has contacts or property in each place. In addition to setting forth mechanisms by which primary jurisdiction can be determined, the bill addresses communications and the sharing of information between courts concerning guardianship and protective proceedings.

Jurisdiction

The bill sets forth the procedures to be followed to resolve a variety of jurisdictional issues that may arise in guardianship proceedings concerning an individual. These issues include the appointment of a guardian or issuance of a protective order, communications between courts in more than one jurisdiction, permitting parties to participate in those communications, providing for the deposition and testimony of witnesses, transmission of documentary evidence from another jurisdiction to a court of this State, provisions for the exercise of emergency jurisdiction, provisions for a court of this State to decline to exercise jurisdiction if it determines that a court of another state is the more appropriate forum, and resolving situations when proceedings concerning an individual have begun in more than one state.

A court of this State would have jurisdiction to appoint a guardian or issue a protective order for an individual for whom the appointment of a guardian or the issuance of a protective order is sought if: (1) this State is that individual's "home state"; or (2) on the date the petition is filed, this State is a state with a "significant connection"; or (3) if the home state and all significant connection states have declined jurisdiction. The bill defines "home state" as the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition. A state with a "significant connection" is a state, other than a home state, with which a respondent has a significant connection other than mere physical presence and where substantial evidence concerning the respondent is available. The bill sets forth the various factors to be considered by the court in making this jurisdictional determination.

Communication and Cooperation Between Courts

The bill provides that a court in this State may communicate with a court of another state concerning a proceeding and allow parties to participate in the communication, in accordance with the Rules Governing the Courts of the State of New Jersey. The bill specifies that a court of this State may request that the out-of-state court hold evidentiary hearings and issue various orders, as appropriate.

Testimony and Documentary Evidence

A court of this State may permit a witness located in another state to be deposed or to testify by any means permitted by the Rules Governing the Courts of the State of New Jersey, and a court of this State would be required to cooperate with the court of another state in arranging for the deposition or testimony. Documentary evidence transmitted from another state to a court of this State may be admitted into evidence consistent with the New Jersey Rules of Evidence.

Emergency Jurisdiction

A court would have emergency jurisdiction even if it lacks "home state" or "significant connection" jurisdiction. Emergency jurisdiction allows the court to: (1) appoint a guardian or issue a protective order in an emergency for a respondent who is physically present in this State, in accordance with State law; (2) appoint a guardian of real or tangible personal property located in this State for which the respondent has an ownership interest; (3) issue a protective order with respect to real or tangible personal property in this State; or (4) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued.

Exclusive and Continuing Jurisdiction

Except in cases where a court has attained emergency jurisdiction, a court that has appointed a guardian or issued a protective order pursuant to the provisions of the bill would have exclusive and continuing jurisdiction over the proceedings until the proceeding is terminated by the court or the appointment or order expires.

Appropriate Forum

The bill provides that a court of this State having jurisdiction could decline to exercise jurisdiction if it determined at any time that a court of another state were the more appropriate forum. Once jurisdiction is declined, the court would have to dismiss or stay the proceeding.

Decline of Jurisdiction by Reason of Conduct

If, at any time, a court of this State determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may: (1) decline to exercise jurisdiction; (2) exercise jurisdiction for the limited purpose to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct; or (3) continue to exercise jurisdiction.

Proceedings in More Than One State

If the court has jurisdiction, the court may proceed unless a court of another state acquired jurisdiction prior to the first court making an appointment or issuing a protective order. If the court does not have jurisdiction, the court would stay the proceeding and communicate with the other court. If the court in the other state has jurisdiction, the court of this State would dismiss the petition, unless the court in the other state determines that the court of this State is a more appropriate forum.

Transfer of Guardianship or Conservatorship to Another State and Acceptance of Guardianship from Another State

The bill provides that a guardian or conservator appointed in this State may petition the court to transfer the guardianship or conservatorship to another state and sets forth the procedural requirements for doing so. To confirm transfer of a guardianship or conservatorship to this State, the guardian or conservator in the other state would be required to petition the court to accept the guardianship or conservatorship, following procedures set forth in the bill.

Registration of Guardianship or Conservatorship Orders

If a guardian has been appointed in another state and an application for guardianship or conservatorship is not pending, that guardian or conservator may register the order in this State by filing with the court certified copies of the order and letters of office, and of any bond, as appropriate. Once the order has been registered, 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.

Amendments to Existing Statutes

For purposes of consistency within the statutes, sections 48 and 49 of P.L.2005, c.304 (C.3B:12-66.1 and C.3B:12-66.2), concerning

transfer of guardianship services between states, are amended to make these sections apply only to minors.

The committee amendments clarify various references to courts in this State (sections 2 and 3). In addition, the committee amended the bill to clarify other terminology, which may differ in use in New Jersey as compared with the model act and other states. Throughout the bill, certain references to a person's "property" are changed to "estate"; the term "conservatee" is defined and added to the bill in cases where that individual would be a party to a proceeding; use of the terms "petition" and "complaint" are clarified; and the term "protective order" is amended to provide that it is not to be construed to conflict with how that term as used in other State statutes. The committee also amended the bill to add the term "registration" to the definitions. Clarification is made to provide for cases in which an individual has been declared incapacitated. The committee amended the bill to remove a provision that would have provided for a \$175 filing fee. A technical amendment has been made to correct a statutory reference in section 20 of the bill. N.J.S.3B:12-29, which concerns the appointment of a guardian of the estate for a non-resident, is repealed.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1755

STATE OF NEW JERSEY

DATED: JUNE 14, 2012

The Assembly Judiciary Committee reports favorably Senate Bill No. 1755 (1R).

This bill enacts the “New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act,” recommended by the New Jersey Law Revision Commission in its February 18, 2011 Final Report. The bill is modeled after the “Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act” approved in 2007 by the National Conference of Commissioners on Uniform State Laws.

This bill would establish uniform procedures to resolve interstate conflicts and uncertainty in cases when an adult is subject to guardianship proceedings in more than one state, or in a state and another country, where the adult has contacts or property in each place. The bill sets forth procedures with regard to sharing of information between courts concerning guardianship and protective proceedings.

JURISDICTION

The bill sets forth the procedures to be followed to resolve a variety of jurisdictional issues that may arise in guardianship proceedings concerning an individual. These issues include: the appointment of a guardian or issuance of a protective order; communications between courts in more than one jurisdiction, permitting parties to participate in those communications; providing for the deposition and testimony of witnesses; transmission of documentary evidence from another jurisdiction to a court of this State; provisions for the exercise of emergency jurisdiction; provisions for a court of this State to decline to exercise jurisdiction if it determines that a court of another state is the more appropriate forum; and resolving situations when proceedings concerning an individual have begun in more than one state.

Under the bill, a court of this State would have jurisdiction to appoint a guardian or issue a protective order for an individual for whom the appointment of a guardian or the issuance of a protective order is sought if: (1) this State is that individual’s “home state”; or (2) on the date the petition is filed, this State is a state with a “significant connection”; or (3) if the home state and all significant connection

states have declined jurisdiction. The bill defines “home state” as the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition. A state with a “significant connection” is a state, other than a home state, with which a respondent has a significant connection other than mere physical presence and where substantial evidence concerning the respondent is available. The bill sets forth the various factors to be considered by the court in making this jurisdictional determination.

The definitional section of the bill also clarifies terminology which may differ in use in this State as compared with the model act and other states, such as: “conservatee” (a person who has not been adjudicated incapacitated but who by reason of advanced age or physical infirmity is unable to manage his property or who has become unable to provide for himself or others dependent upon him); “guardianship order” and “guardianship proceeding” (an order declaring a person incapacitated and appointing a guardian, and a judicial proceeding in which such an appointment is sought); “incapacitated person” (an adult declared incapacitated and for whom a guardian has been appointed); “protective order” (an order issued pursuant to the provisions of current law); “petition” (an initiating court document such as a verified complaint); and “registration” (filing in this State of an out-of-State guardianship or conservatorship order).

COMMUNICATION AND COOPERATION BETWEEN COURTS

The bill provides that a court in this State may communicate with a court of another state concerning a proceeding and allow parties to participate in the communication, in accordance with the Rules Governing the Courts of the State of New Jersey. The bill specifies that a court of this State may request that the out-of-State court hold evidentiary hearings and issue various orders, as appropriate. The bill also provides that if an out-of-State court in which a guardianship or protective proceeding is pending requests assistance, a court of this State has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

TESTIMONY AND DOCUMENTARY EVIDENCE

A court of this State may permit a witness located in another state to be deposed or to testify by any means permitted by the Rules Governing the Courts of the State of New Jersey, and a court of this State would be required to cooperate with the court of another state in arranging for the deposition or testimony. Documentary evidence transmitted from another state to a court of this State may be admitted into evidence consistent with the New Jersey Rules of Evidence.

EMERGENCY JURISDICTION

A court would have emergency jurisdiction even if it lacks “home state” or “significant connection” jurisdiction. Emergency jurisdiction allows the court to: (1) appoint a guardian or issue a protective order in an emergency for a respondent who is physically present in this State, in accordance with State law; (2) appoint a guardian of real or tangible personal property located in this State for which the respondent has an ownership interest; (3) issue a protective order with respect to real or tangible personal property in this State; or (4) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued. The bill provides that if a petition for the appointment of a guardian or issuance of a protective order in an emergency is brought in this State and this State was not the respondent’s home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

EXCLUSIVE AND CONTINUING JURISDICTION

Except in cases where a court has attained emergency jurisdiction, a court that has appointed a guardian or issued a protective order pursuant to the provisions of the bill would have exclusive and continuing jurisdiction over the proceedings until the proceeding is terminated by the court or the appointment or order expires.

APPROPRIATE FORUM

The bill provides that a court of this State having jurisdiction could decline to exercise jurisdiction if it determined at any time that a court of another state were the more appropriate forum. Once jurisdiction is declined, the court would have to dismiss or stay the proceeding.

The bill enumerates the relevant factors the court must consider in making this determination which include: (1) any expressed preference of the respondent; (2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation; (3) the length of time the respondent was physically present in or was a legal resident of this or another state; (4) the distance of the respondent from the court in each state; (5) the financial circumstances of the respondent’s estate; (6) the nature and location of the evidence; (7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence; (8) the familiarity of the court of each state with the facts and issues in the proceeding; and (9) if an appointment were to be made, the court’s ability to monitor the conduct of the guardian or the conservator.

DECLINE OF JURISDICTION BY REASON OF CONDUCT

If, at any time, a court of this State determines that it acquired jurisdiction to declare a person incapacitated, appoint a guardian or issue a protective order because of unjustifiable conduct, the court may: (1) decline to exercise jurisdiction; (2) exercise jurisdiction for

the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct; or (3) continue to exercise jurisdiction. If the court determines that it acquired jurisdiction because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorneys' fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. However, the court may not assess fees, costs, or expenses of any kind against the State or governmental subdivision.

PROCEEDINGS IN MORE THAN ONE STATE

If the court has jurisdiction, the court may proceed unless a court of another state acquired jurisdiction prior to the first court making an appointment or issuing a protective order. If the court does not have jurisdiction, the court would stay the proceeding and communicate with the other court. If the court in the other state has jurisdiction, the court of this State would dismiss the petition, unless the court in the other state determines that the court of this State is a more appropriate forum.

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE AND ACCEPTANCE OF GUARDIANSHIP FROM ANOTHER STATE

The bill provides that a guardian or conservator appointed in this State may petition the court to transfer the guardianship or conservatorship to another state and sets forth the procedural requirements for doing so. To confirm transfer of a guardianship or conservatorship to this State, the guardian or conservator in the other state would be required to petition the court to accept the guardianship or conservatorship, following procedures set forth in the bill.

REGISTRATION OF GUARDIANSHIP OR CONSERVATORSHIP ORDERS

If a guardian has been appointed in another state and an application for guardianship or conservatorship is not pending, that guardian or conservator may register the order in this State by filing with the court certified copies of the order and letters of office, and of any bond, as appropriate. Once the order has been registered, 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. The guardianship or conservatorship orders would be filed with the Surrogate, as Deputy Clerk of the Superior Court, Chancery Division, Probate Part, pursuant to Rules of Court.

EXISTING STATUTES

For purposes of consistency within the statutes, sections 48 and 49 of P.L.2005, c.304 (C.3B:12-66.1 and C.3B:12-66.2), concerning transfer of guardianship services between states, are amended to make these sections apply only to minors. The bill also repeals N.J.S.3B:12-29 concerning appointment of a guardian of a non-resident since the bill's provisions obviate the need for this section.

This bill is identical to Assembly Bill No. 2628 (1R).

ASSEMBLY, No. 2628

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED MARCH 5, 2012

Sponsored by:

Assemblyman SCOTT RUDDER
District 8 (Atlantic, Burlington and Camden)
Assemblyman TROY SINGLETON
District 7 (Burlington)
Assemblywoman SHEILA Y. OLIVER
District 34 (Essex and Passaic)
Assemblyman CHRISTOPHER J. BROWN
District 8 (Atlantic, Burlington and Camden)
Assemblyman HERB CONAWAY, JR.
District 7 (Burlington)

Co-Sponsored by:

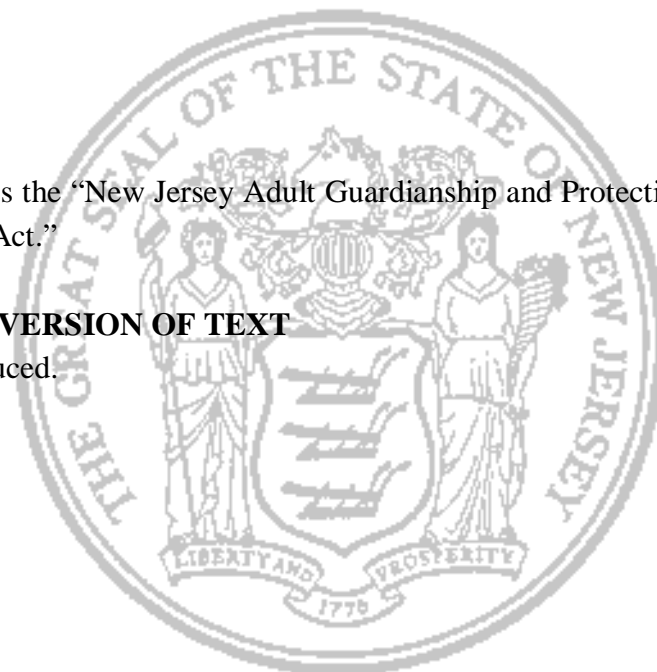
Assemblywoman Simon, Assemblymen Benson, Diegnan, Wolfe, McGuckin, Fuentes, Assemblywoman Sumter, Assemblymen DeAngelo, Caputo, Schroeder, Assemblywoman Jasey, Assemblymen Johnson, Amodeo, C.A.Brown, Giblin, Assemblywoman Quijano and Assemblyman McKeon

SYNOPSIS

Establishes the "New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/8/2012)

1 AN ACT concerning adult guardianship proceedings and revising
2 various parts of the statutory law and supplementing Title 3B of
3 the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) This act shall be known and may be cited as
9 the “New Jersey Adult Guardianship and Protective Proceedings
10 Jurisdiction Act.”

11
12 2. (New section) Scope of Act.

13 a. P.L. , c. (C.) (pending before the Legislature as
14 this bill) governs the exercise of jurisdiction over guardianship or
15 protective orders, as those terms are defined in P.L. ,
16 c. (C.) (pending before the Legislature as this bill), when
17 there are interstate conflicts or uncertainty regarding this
18 jurisdiction. The act establishes uniform procedures that are
19 intended to be used to facilitate proceedings between courts in
20 different states and to resolve uncertainty about appropriate
21 jurisdiction.

22 b. P.L. , c. (C.) (pending before the Legislature as
23 this bill) is not intended to and does not alter substantive law
24 pertaining to guardianship, conservatorship and protective
25 proceedings or arrangements and protective orders as defined
26 elsewhere in Title 3B of the New Jersey Statutes.

27
28 3. (New section) Definitions.

29 As used in P.L. , c. (C.) (pending before the Legislature
30 as this bill), unless otherwise defined:

31 a. “Adult” means an individual at least 18 years of age.

32 b. “Conservator” means a person appointed by the court to
33 administer the property of an adult, including a person appointed, as
34 appropriate, under N.J.S.3B:13A-1 et seq.

35 c. “Guardian” means a person appointed by the court to make
36 decisions regarding the person or property of an incapacitated adult,
37 including a person who has qualified as a guardian of the person or
38 estate, or both, of an incapacitated person pursuant to court
39 appointment in accordance with N.J.S.3B:12-1 et seq. or its
40 equivalent in a state other than New Jersey.

41 d. “Guardianship order” means an order appointing a guardian.

42 e. “Guardianship proceeding” means a judicial proceeding in
43 which an order for the appointment of a guardian is sought or has
44 been issued.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 f. "Home state" means the state in which the respondent was
2 physically present, including any period of temporary absence, for
3 at least six consecutive months immediately before the filing of a
4 complaint for the appointment of a guardian or a protective order;
5 or if none, the state in which the respondent was physically present,
6 including any period of temporary absence, for at least six
7 consecutive months ending within the six months prior to the filing
8 of the complaint.
- 9 g. "Incapacitated person" means an adult for whom a guardian
10 has been appointed.
- 11 h. "Party" means the respondent, petitioner, guardian,
12 conservator, or any other person authorized by the court to
13 participate in a guardianship or protective proceeding.
- 14 i. "Protected person" means an adult for whom a protective
15 order has been issued.
- 16 j. "Protective order" means:
- 17 (1) An order related to an adult who has been declared
18 incapacitated by a court or for whom such a declaration is sought,
19 including but not limited to an arrangement or order related to
20 management of the incapacitated person's property, which is issued
21 pursuant to N.J.S.3B:12-1 and N.J.S.3B:12-2; or
- 22 (2) An order appointing a conservator, including but not limited
23 to an order which is issued pursuant to N.J.S.3B:13A-1 et seq; or
- 24 (3) An order to protect a "vulnerable adult" as that term is
25 defined in section 2 of P.L.1993, c.249 (C.52:27D-407), including
26 but not limited to an order which is issued pursuant to the "Adult
27 Protective Services Act," P.L.1993, c.249 (C.52:27D-406 et seq); or
- 28 (4) An order or arrangement, pursuant to N.J.S.3B:12-1, for a
29 person for whom a declaration of incapacity is not sought.
- 30 k. "Protective proceeding" means a judicial proceeding in
31 which a protective order is sought or has been issued.
- 32 l. "Record" means information that is inscribed on a tangible
33 medium or that is stored in an electronic or other medium and is
34 retrievable in perceivable form.
- 35 m. "Respondent" means an adult for whom the appointment of a
36 guardian or the issuance of a protective order is sought.
- 37 n. "Significant-connection state" means a state, other than the
38 home state, with which a respondent has a significant connection
39 other than mere physical presence and in which substantial evidence
40 concerning the respondent is available.
- 41 o. "State" means a state of the United States, the District of
42 Columbia, Puerto Rico, the United States Virgin Islands, a federally
43 recognized Indian tribe, or any territory or insular possession
44 subject to the jurisdiction of the United States.
- 45
- 46 4. (New section) International application of the act.
- 47 A court of this State may treat a foreign country as if it were a
48 state for the purpose of applying all sections of the P.L. ,

1 c. (C.) (pending before the Legislature as this bill) except for
2 sections 19 and 20 of P.L. ,c. (C.) (pending before the
3 Legislature as this bill) pertaining to registration.

4

5 5. (New section) Which act governs; exclusive jurisdictional
6 basis; applicability.

7 P.L. , c. (C.) (pending before the Legislature as this bill)
8 governs jurisdiction of guardianship proceedings and provides the
9 exclusive jurisdictional basis for a court of this State to appoint a
10 guardian or issue a protective order. The appointment of a guardian
11 shall continue to be governed by N.J.S.3B:12-1 et seq. and the
12 appointment of a conservator shall continue to be governed by
13 N.J.S.3B:13A-1 et seq.

14 P.L. , c. (C.) (pending before the Legislature as this bill)
15 act shall be construed and applied in conjunction with N.J.S.3B:12-
16 1 et seq. and N.J.S.3B:13A-1 et seq.

17

18 6. (New section) Communication between courts.

19 a. A court of this State may communicate with a court of
20 another state concerning a proceeding arising pursuant to P.L. ,
21 c. (C.) (pending before the Legislature as this bill). The court
22 may allow the parties to participate in the communication in
23 accordance with the Rules Governing the Courts of the State of
24 New Jersey.

25 b. Except as otherwise provided in subsection c., the court shall
26 make a record of the communication. The record may be limited to
27 the fact that the communication occurred.

28 c. Courts may communicate concerning schedules, calendars,
29 court records, and other administrative matters without making a
30 record.

31

32 7. (New section) Cooperation between courts.

33 a. In a guardianship or protective proceeding, a court of this
34 State may request the appropriate court of another state to do any of
35 the following:

36 (1) hold an evidentiary hearing;

37 (2) order a person in that state to produce evidence or give
38 testimony pursuant to procedures of that state;

39 (3) order that an evaluation or assessment be made of the
40 respondent;

41 (4) order any appropriate investigation of a person involved in a
42 proceeding;

43 (5) forward to the court of this State a certified copy of the
44 transcript or other record of a hearing under paragraph (1) or any
45 other proceeding, any evidence otherwise produced under paragraph
46 (2), and any evaluation or assessment prepared in compliance with
47 an order under paragraph (3) or (4);

1 (6) issue any order necessary to assure the appearance in the
2 proceeding of a person whose presence is necessary for the court to
3 make a determination, including the respondent or the incapacitated
4 or protected person; and

5 (7) issue an order authorizing the release of medical, financial,
6 criminal, or other relevant information in that state, including
7 protected health information which meets federal and state laws.

8 b. If a court of another state in which a guardianship or
9 protective proceeding is pending requests assistance of the kind
10 provided in subsection (a), a court of this State has jurisdiction for
11 the limited purpose of granting the request or making reasonable
12 efforts to comply with the request.

13

14 8. (New section) Taking testimony in another state;
15 documentary evidence.

16 a. A court of this State may permit a witness located in another
17 state to be deposed or to testify by any means permitted by the
18 Rules Governing the Courts of the State of New Jersey. A court of
19 this State shall cooperate with the court of another state in
20 designating an appropriate location for the deposition or testimony.

21 b. Documentary evidence transmitted from another state to a
22 court of this State may be admitted into evidence consistent with
23 the New Jersey Rules of Evidence.

24

25 9. (New section) Jurisdiction; determination.

26 a. A court of this State has jurisdiction to appoint a guardian or
27 issue a protective order for a respondent if:

28 (1) This State is the respondent's home state as defined in
29 P.L. , c. (C.) (pending before the Legislature as this bill);
30 or

31 (2) On the date the complaint is filed, this State is a significant-
32 connection state, as defined in P.L. , c. (C.) (pending
33 before the Legislature as this bill) and determined in accordance
34 with section 10 of P.L. , c. (C.) (pending before the
35 Legislature as this bill), and:

36 (a) the respondent either does not have a home state or a court of
37 the respondent's home state has declined to exercise jurisdiction
38 because this State is a more appropriate forum; or

39 (b) the respondent has a home state, a petition for an
40 appointment or order is not pending in a court of another state or
41 another significant-connection state, and, before this State's court
42 acts:

43 (i) a petition for an appointment or order is not filed in the
44 respondent's home state;

45 (ii) an objection to the court's jurisdiction is not filed by a person
46 required to be notified of the proceeding; and

1 (iii) the court concludes that it is an appropriate forum under the
2 factors set forth in section 13 of P.L. , c. (C.) (pending
3 before the Legislature as this bill);

4 (3) Although this State does not have jurisdiction under either
5 subsection a. or b. of this section, the home state and all significant-
6 connection states have declined to exercise jurisdiction because this
7 State is the more appropriate forum, and jurisdiction in this State is
8 consistent with the New Jersey and United States Constitutions; or

9 b. A court of this State may assume emergency jurisdiction
10 under section 11 of P.L. , c. (C.) (pending before the
11 Legislature as this bill).

12
13 10. (New section) Significant-connection state; determination.

14 In determining whether a respondent has a significant connection
15 with a particular state, the court shall consider:

16 a. the location of the respondent's family and other persons
17 required to be notified of the guardianship or protective proceeding;

18 b. the length of time the respondent at any time was physically
19 present in the state and the duration of any absence;

20 c. the location of the respondent's property; and

21 d. the extent to which the respondent has ties to the state such
22 as voting registration, state or local tax return filing, vehicle
23 registration, driver's license, social relationship, and receipt of
24 services.

25
26 11. (New section) Emergency jurisdiction.

27 a. A court of this State lacking jurisdiction under section 9 of
28 P.L. , c. (C.) (pending before the Legislature as this bill)
29 has emergency jurisdiction to do any of the following:

30 (1) appoint a guardian or issue a protective order in an
31 emergency, in accordance with subsection c. of section 12 of
32 P.L.2005, c.304 (C.3B:12-24.1) and this section, for a respondent
33 who is physically present in this State;

34 (2) appoint a guardian of real or tangible personal property
35 located in this State for which the respondent has an ownership
36 interest;

37 (3) issue a protective order with respect to real or tangible
38 personal property in this State; or

39 (4) appoint, under procedures similar to section 17 of P.L. ,
40 c. (C.) (pending before the Legislature as this bill), a
41 guardian or conservator for an incapacitated or protected person for
42 whom a provisional order to transfer the proceeding from another
43 state has been issued.

44 b. If a petition for the appointment of a guardian or issuance of
45 a protective order in an emergency in accordance with subsection c.
46 of section 12 of P.L.2005, c.304 (C.3B:12-24.1) and this section is
47 brought in this State and this State was not the respondent's home
48 state on the date the petition was filed, the court shall dismiss the

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

4
5 12. (New section) Exclusive and continuing jurisdiction.

6 Except as otherwise provided in section 11 of P.L. ,
7 c. (C.) (pending before the Legislature as this bill), a court
8 that has appointed a guardian or issued a protective order consistent
9 with P.L. , c. (C.) (pending before the Legislature as this
10 bill) has exclusive and continuing jurisdiction over the proceeding
11 until the proceeding is terminated by the court, or the appointment
12 or order expires by its own terms.

13
14 13. (New section) Appropriate forum.

15 a. A court of this State having jurisdiction under section 9 of
16 P.L. , c. (C.)(pending before the Legislature as this bill) to
17 appoint a guardian or issue a protective order may decline to
18 exercise jurisdiction if it determines at any time that a court of
19 another state is a more appropriate forum.

20 b. If a court of this State declines to exercise jurisdiction under
21 subsection a., it shall either dismiss or stay the proceeding. The
22 court may impose any condition it deems just and proper, including
23 the condition that a complaint for the appointment of a guardian or
24 issuance of a protective order be filed promptly in another state.

25 c. In determining whether it is an appropriate forum, the court
26 shall consider all relevant factors, including:

27 (1) any expressed preference of the respondent;

28 (2) whether abuse, neglect, or exploitation of the respondent has
29 occurred or is likely to occur and which state could best protect the
30 respondent from the abuse, neglect, or exploitation;

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

33 (4) the distance of the respondent from the court of each state;

34 (5) the financial circumstances of the respondent's estate;

35 (6) the nature and location of the evidence;

36 (7) the ability of the court of each state to decide the issue
37 expeditiously and the procedures necessary to present evidence;

38 (8) the familiarity of the court of each state with the facts and
39 issues in the proceeding; and

40 (9) if an appointment were to be made, the court's ability to
41 monitor the conduct of the guardian or the conservator.

42
43 14. (New section) Jurisdiction declined by reason of conduct.

44 a. If at any time a court of this State determines that it acquired
45 jurisdiction to appoint a guardian or issue a protective order because
46 of unjustifiable conduct, the court may:

47 (1) decline to exercise jurisdiction;

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

8 (3) continue to exercise jurisdiction after considering:

9 (a) the extent to which the respondent and all persons required to
10 be notified of the proceedings have acquiesced in the exercise of the
11 court's 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 c. of section 13
14 of P.L. , c. (C.) (pending before the Legislature as this
15 bill); and

16 (c) whether the court of any other state would have jurisdiction
17 under factual circumstances in substantial conformity with the
18 jurisdictional standards of section 9 of P.L. , c. (C.)
19 (pending before the Legislature as this bill).

20 b. If a court of this State determines that it acquired jurisdiction
21 to appoint a guardian or issue a protective order because a party
22 seeking to invoke its jurisdiction engaged in unjustifiable conduct,
23 it may assess against that party necessary and reasonable expenses,
24 including attorneys' fees, investigative fees, court costs,
25 communication expenses, witness fees and expenses, and travel
26 expenses. The court may not assess fees, costs, or expenses of any
27 kind against this State or a governmental subdivision, agency, or
28 instrumentality of this State unless authorized by law other than
29 P.L. , c. (C.) (pending before the Legislature as this bill).

30
31 15. (New section) Notice of proceeding.

32 If this State was not the respondent's home state on the date a
33 complaint for the appointment of a guardian or issuance of a
34 protective order is filed in this State, notice of the complaint shall
35 be given, in the same manner as notice is required to be given in
36 this State, to the respondent and to the persons who would be
37 entitled to notice if the regular procedures for appointment of a
38 guardian or a conservator under the Rules Governing the Courts of
39 the State of New Jersey were applicable.

40
41 16. (New section) Proceedings in more than one state.

42 Except for a complaint for the appointment of a guardian or
43 issuance of a protective order in an emergency under paragraph (1)
44 of subsection a. of section 11 of P.L. , c. (C.) (pending
45 before the Legislature as this bill), or appointment of a guardian of
46 property or issuance of a protective order limited to property
47 located in this State under paragraphs (2) or (3) of subsection a. of
48 section 11 of P.L. , c. (C.) (pending before the Legislature

1 as this bill) if a complaint for the appointment of a guardian or
2 issuance of a protective order is filed in this State and in another
3 state and neither complaint has been dismissed or withdrawn, the
4 following shall apply:

5 a. A court of this State with jurisdiction under section 9 of
6 P.L. , c. (C.) (pending before the Legislature as this bill) may
7 proceed unless a court of another state acquires jurisdiction under
8 similar provisions before the appointment or issuance of the order.

9 b. A court of this State without jurisdiction under section 9 of
10 P.L. , c. (C.) (pending before the Legislature as this bill),
11 whether at the time the complaint is filed or at any time before the
12 appointment or issuance of the order, shall stay the proceeding and
13 communicate with the court of another state. If the court in the
14 other state has jurisdiction, the court of this State shall dismiss the
15 complaint unless the court in the other state determines that the
16 court of this State is a more appropriate forum.

17
18 17. (New section) Transfer of guardianship or conservatorship to
19 another state.

20 a. A guardian or conservator appointed in this State may
21 petition the court to transfer the guardianship or conservatorship to
22 another state.

23 b. Notice of a petition for transfer shall be given to the persons
24 that would be entitled to notice of a petition in this State for the
25 appointment of a guardian or conservator.

26 c. On the court's own motion or upon request of the guardian
27 or conservator, or other person required to be notified of the
28 complaint, the court shall hold a hearing on a petition to transfer.

29 d. The court shall issue an order provisionally granting a
30 petition to transfer a guardianship and direct the guardian to petition
31 for guardianship in the other state if the court is satisfied that the
32 guardianship will be accepted by the court of the other state and the
33 court finds that:

34 (1) in the case of a guardianship of the person, the incapacitated
35 person is physically present in or is reasonably expected to move
36 permanently to the other state, or in the case of a guardianship of
37 property, the incapacitated person is physically present in or is
38 reasonably expected to move permanently to, or has a significant
39 connection to, the other state; and

40 (2) an objection to the transfer has not been made or, that the
41 transfer would not be contrary to the interests of the incapacitated
42 person; and

43 (3) in the case of a guardianship of the person, plans for care and
44 services for the incapacitated person in the other state are
45 reasonable and sufficient, or in the case of a guardianship of
46 property, adequate arrangements are made for management of the
47 incapacitated person's property.

1 e. The court shall issue a provisional order granting a transfer a
2 conservatorship and shall direct the conservator to petition for
3 conservatorship in the other state if the court is satisfied that the
4 conservatorship will be accepted by the court of the other state and
5 the court finds that:

6 (1) the protected person is physically present in or is reasonably
7 expected to move permanently to the other state, or the protected
8 person has a significant connection to the other state considering the
9 factors in section 10 of P.L. , c. (C.) (pending before the
10 Legislature as this bill);

11 (2) an objection to the transfer has not been made or, that the
12 transfer would not be contrary to the interests of the incapacitated
13 person; and

14 (3) adequate arrangements will be made for management of the
15 protected person's property.

16 f. The court shall issue a final order confirming the transfer
17 and terminating the guardianship or conservatorship upon receipt
18 of:

19 (1) a provisional order accepting the guardianship or
20 conservatorship from the court to which the guardianship or
21 conservatorship is to be transferred under provisions similar to
22 section 18 of P.L. , c. (C.) (pending before the Legislature
23 as this bill); and

24 (2) the documents required to terminate a guardianship or
25 conservatorship in this State.

26

27 18. (New section) Accepting guardianship or conservatorship
28 transferred from another state.

29 a. To confirm transfer of a guardianship or conservatorship to
30 this State under provisions similar to section 17 of P.L. ,
31 c. (C.) (pending before the Legislature as this bill), the
32 guardian or conservator in the other state shall file a complaint in
33 the court of this State to accept the guardianship of the person or the
34 person's property, or both, or the conservatorship. The complaint
35 shall include a certified copy of the other state's provisional order
36 of transfer.

37 b. Notice of a complaint under this section shall be given, in
38 the same manner as notice is required to be given in this State, to
39 those persons that would be entitled to notice if the complaint were
40 for the appointment of a guardian or issuance of a protective order
41 in both the transferring state and this State.

42 c. On the court's own motion or upon request of the guardian
43 or of the conservator, or other person required to be notified of the
44 proceeding, the court shall hold a hearing on a complaint filed
45 pursuant to this section.

46 d. The court shall issue an order provisionally granting relief
47 under this section unless:

1 (1) an objection is made and the court determines that transfer of
2 the proceeding would be contrary to the interests of the
3 incapacitated or protected person; or

4 (2) the guardian or conservator is ineligible for appointment in
5 this State.

6 e. The final order accepting the proceeding and appointing the
7 guardian or conservator from the other state as guardian of the
8 person or property, or both, or conservator in this State shall be
9 issued upon the receipt by this State's court of a final order issued
10 under provisions similar to section 17 of P.L. , c. (C.)
11 (pending before the Legislature as this bill) transferring the
12 proceeding to this State.

13 f. Upon application of a party or upon the court's own motion,
14 the court shall determine whether the guardianship of the person or
15 property, or both, or the conservatorship needs to be modified to
16 conform to the law of this State.

17 g. In granting an application under this section, the court shall
18 recognize a guardianship or conservatorship order from the other
19 state, including the determination of the incapacitated person's
20 incapacity and the appointment of the guardian of the person or
21 property, or both, or of the conservator.

22 h. The denial by a court of this State of an application to accept
23 a guardianship or conservatorship transferred from another state
24 does not affect the ability of the guardian or conservator to seek
25 appointment as guardian of the person or property, or both, in this
26 State under N.J.S.3B:12-25 or as conservator under N.J.S.3B:13A-1
27 et seq., if the court has jurisdiction to make an appointment other
28 than by reason of the provisional order of transfer.

29

30 19. (New section) Registration of guardianship or
31 conservatorship orders.

32 If a guardian has been appointed in another state and an
33 application for the appointment of a guardian of the person or
34 property, or both, is not pending in this State, or if a conservator has
35 been appointed in another state and an application for the
36 appointment of a conservator is not pending in this State, the
37 guardian or conservator appointed in the other state, after giving
38 notice to the appointing court of an intent to register, may register
39 the guardianship or conservatorship order in this State by filing in
40 the Superior Court, Probate Division, in any appropriate county of
41 this State, certified copies of the order and letters of office, and of
42 any bond, as appropriate. For purposes of a guardian of the person,
43 an appropriate county is any county where the guardian seeks to
44 maintain an action or proceeding on behalf of the incapacitated
45 person; for purposes of a guardian of the property or of a
46 conservatorship, an appropriate county is the county where the
47 property belonging to the incapacitated person or conservatee is
48 located.

1 20. (New section) Effect of registration.

2 a. Upon registration of a guardianship or protective order from
3 another state, the guardian or conservator may exercise in this State
4 all powers authorized in the order of appointment except as
5 prohibited under the laws of this State, including maintaining
6 actions and proceedings in this State and, if the guardian or
7 conservator is not a resident of this State, subject to any conditions
8 imposed upon nonresident parties.

9 b. A court of this State may grant any relief available under
10 P.L. , c. (C.) (pending before the Legislature as this bill)
11 and other law of this State to enforce a registered order.

12 c. A court of this State shall recognize and enforce, but may not
13 modify, except in accordance with section 18 of P.L. ,
14 c. (C.) (pending before the Legislature as this bill), a
15 registered order.

16

17 21. (New section) Uniformity of application and construction.

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

21

22 22. N.J.S.3B:12-29 is amended to read as follows:

23 3B:12-29. Appointment of guardian of the property for
24 nonresident incapacitated **[person] minor**.

25 When a nonresident minor has been or shall be found to be an
26 incapacitated person under the laws of the state or country wherein
27 the nonresident resides, the Superior Court may appoint a guardian
28 for the nonresident's property in this State.

29 (cf: P.L.2005, c.304, s.17)

30

31 23. N.J.S.22A:2-30 is amended to read as follows:

32 22A:2-30. Fees of surrogate and deputy clerk of the Superior
33 Court. Fees for services of the surrogate and deputy clerk of the
34 Superior Court enumerated below shall be as follows and shall be
35 for the use of the county in which the fees are collected:

36 **PROBATE OF WILLS AND COPIES**

37 Probate of a will of not more than two pages, \$100.00.

38 Each additional page, \$ 5.00.

39 The above fee is for all services in preparation and execution of
40 complaint, filing proof of death, deposition of one witness,
41 qualification of executor, filing power of attorney, surrogate's
42 certificate, judgment for probate, letters testamentary, plain copy of
43 will, binding, recording, microfilming or photostating, comparing,
44 docketing, report to the Division of Taxation in the Department of
45 the Treasury, report and transmission to the Clerk of the Superior
46 Court.

47 Probate of will of not more than two pages without letters,
48 \$50.00. Each additional page, \$ 5.00. This fee is for the same

1 services as are enumerated in the preceding paragraph, except
2 letters, surrogate's certificate and qualification of executor.

3 Probate of each codicil, not exceeding one page, \$25.00.

4 Where codicil requires an additional witness, \$5.00.

5 To reopen probate proceedings for qualification of executor or
6 taking proof of extra witness, \$25.00.

7 One witness in the above probate proceedings, no charge.

8 Each additional witness, \$5.00.

9 Recording and comparing, microfilming or photostating, each
10 additional page of will or codicil, \$5.00.

11 Filing, entering, issuing and recording, microfilming or
12 photostating, proceedings in commission for deposition of foreign
13 witness to a will or codicil, \$35.00. Plain extra copy of will, \$3.00
14 for each page.

15 Certified extra copy of will, \$5.00 for each page, plus \$5.00 for
16 certificate.

17 Certified copy of will with proofs for New Jersey county, not
18 exceeding two pages including will and codicil, \$50.00. For pages
19 in excess of two, \$5.00 for each page.

20 Wills filed but not probated (as, where there are no assets),
21 \$10.00 for first two pages, \$5.00 for each additional page, \$5.00 for
22 cover letter stating no assets, \$5.00 for death certificate.

23 Exemplifying will for another state, not exceeding two pages
24 including will and codicil, plus cost of certificate of Secretary of
25 State when requisite, \$75.00 (not including \$9.00 fee for
26 exemplified forms). For pages in excess of two, \$5.00 for each
27 page.

28 Recording, microfilming or photostating, docketing, indexing,
29 filing and reporting to the Division of Taxation in the Department
30 of the Treasury an exemplified copy of will and probate
31 proceedings from another state, \$5.00 for each page.

32 Recording, microfilming or photostating, docketing, indexing
33 and filing a certified copy of will with proofs from New Jersey,
34 \$5.00 for each page.

35 Recording, microfilming or photostating certified transcripts of
36 wills admitted to probate and probate proceedings or letters of
37 administration and administration proceedings granted by the
38 Superior Court, \$5.00 for each page.

39 **LETTERS OF TRUSTEESHIP**

40 Acceptance of trustee and letters of trusteeship, including one
41 certificate, \$50.00.

42 **LETTERS OF ADMINISTRATION**

43 General administration, including preparation and execution of
44 complaint, bond, surety affidavits, necessary recording,
45 microfilming or photostating, indexing, filing, report to the Division
46 of Taxation, including power of attorney and death certificate, in
47 the Department of the Treasury and the Clerk of the Superior Court
48 and original letters including authorization to accept service of

1 process and death certificate, \$125.00, and for other documents,
2 \$5.00 per page.

3 Administration ad prosequendum, \$50.00, and for other
4 documents, \$5.00 per page.

5 Exemplifying administration, \$75.00.

6 Certified copy of administration, \$50.00.

7 Affidavits of surviving spouse or next of kin where the value of
8 the real and personal assets of the estate does not exceed
9 \$20,000.00 or \$10,000.00, respectively, \$5.00 for each \$100.00 or
10 part thereof. Total cost shall not exceed \$50.00. This fee is waived
11 where the value of the assets of the estate does not exceed \$200.00.

12 LETTERS OF GUARDIANSHIP

13 Granting letters of guardianship, acceptance of guardianship and
14 filing of power of attorney, \$50.00.

15 Affidavits of estates of minors where value of real and personal
16 estate does not exceed \$5,000.00, \$5.00 per page.

17 Miscellaneous petitions and orders, \$5.00 per page.

18 INVENTORIES

19 For all services in appointment of appraisers, \$25.00.

20 Filing, entering and recording, microfilming or photostating,
21 inventory and appraisal, not exceeding one page, and affidavits
22 of appraisers and executor, \$25.00.

23 For each additional page, \$5.00.

24 ACCOUNTING

25 For filing complaint and one page of accounting, \$175.00.

26 For auditing, stating, reporting and recording, microfilming or
27 photostating, accounts of executors, administrators, guardians,
28 trustees and assignees, including drawing judgment, but exclusive
29 of advertising costs:

30 In estates up to and including \$2,000.00, no additional fee.

31 In estates from \$2,001.00 to and including \$10,000.00, \$100.00.

32 In estates from \$10,001.00 to and including \$30,000.00, \$125.00.

33 In estates from \$30,001.00 to and including \$65,000.00, \$150.00.

34 In estates from \$65,001.00 to and including \$200,000.00, 3/10 of
35 1% but not less than \$300.00.

36 In estates exceeding \$200,000.00--4/10 of 1%, but not less than
37 \$400.00.

38 For each page of accounting in excess of one, \$5.00.

39 In computing the amount of an estate for the purpose of fixing
40 the fees of a surrogate for auditing and reporting the account, the
41 balance from the prior account shall be excluded.

42 For preparing notice of settlement of accounts and copies of the
43 same, forwarding notice to newspaper, with directions as to
44 publication, obtaining proofs of publication, keeping a record of
45 notices and newspapers to which they are sent and of the moneys
46 received to defray the cost of advertising and transmitting
47 advertising charges to newspaper, \$50.00.

1 No fees herein allowed shall be charged against the recipient of
2 any pension, bounty or allowance, for services of the surrogate and
3 the Probate Part of the Chancery Division of the Superior Court in
4 respect thereof, pursuant to N.J.S.3B:13-9 to 3B:13-14.

5 MISCELLANEOUS PROCEEDINGS

6 Proceedings relative to presumption of death, filing, entering and
7 recording, microfilming or photostating (exclusive of letters), with
8 additional fee for advertising, \$175.00.

9 Sale of land to pay debts (exclusive of advertising), \$175.00.

10 Sale of land in fulfillment of contract made by decedent,
11 \$175.00.

12 Sale of lands within one year, \$175.00.

13 Sale of minor's land, \$175.00.

14 Distribution, filing and entering complaint, recording,
15 microfilming or photostating, and filing judgment, \$175.00.

16 Filing of first paper in action in the Superior Court, Chancery
17 Division, Probate Part, \$175.00.

18 Filing of first paper in action in the Superior Court, Chancery
19 Division, Probate Part, pursuant to P.L. ,c. (C.)(pending
20 before the Legislature as this bill) \$175.00.

21 Filing of answering pleadings or other answering papers in
22 Superior Court, Chancery Division, Probate Part (First paper filed
23 by anyone other than Plaintiff), \$110.00.

24 Adoption of adults, filing and entering proceedings (all papers)
25 including one judgment, \$175.00.

26 Adoption of minors, filing and entering proceedings (all papers)
27 including one judgment, \$175.00.

28 Application for relief subsequent to final judgment in the
29 Superior Court, Chancery Division, Probate Part, \$25.00.

30 Proceedings for the appointment of a conservator, with or
31 without jury trial, \$175.00.

32 Proceeding for the determination of incapacity and for the
33 appointment of a guardian for an alleged incapacitated person, with
34 or without jury trial, \$200.00.

35 Proceedings in connection with payment into court of proceeds
36 of a judgment in favor of a minor, in lieu of bond, pursuant to
37 N.J.S. 3B:15-16 and N.J.S.3B:15-17 (in addition to fees payable
38 under Letters of Guardianship), the following fees are payable upon
39 withdrawal of funds on deposit:

40 For each withdrawal including petitions and orders provided and
41 prepared by the surrogate for withdrawal of funds for court
42 approval:

43 Up to and including \$500.00, \$20.00.

44 From \$501.00 to and including \$1,000.00, \$25.00.

45 From \$1,001.00 to and including \$5,000.00, \$30.00.

46 From \$5,001.00 to and including \$10,000.00, \$35.00.

47 From \$10,001.00 to and including \$25,000, \$40.00.

48 From \$25,001.00 to and including \$50,000.00, \$60.00.

- 1 In excess of \$50,000.00, \$100.00.
- 2 MISCELLANEOUS CHARGES
- 3 Short certificates, \$5.00.
- 4 Validating short certificate within one year of issue of date,
- 5 \$3.00.
- 6 Subpoenas, each, \$25.00.
- 7 Marking true copies, subpoenas, each, \$3.00.
- 8 Marking true copies, orders to show cause, each, \$3.00.
- 9 Marking true copies of other papers, each, \$3.00.
- 10 Authorization of process, \$5.00.
- 11 Swearing each witness, \$2.00.
- 12 Adjournment or continuance, \$15.00.
- 13 Miscellaneous orders of court, first page, \$5.00.
- 14 For each additional page, \$5.00.
- 15 Recording, microfilming or photostating all papers not herein
- 16 provided for, \$5.00 for each page.
- 17 For making copies not otherwise provided for, \$3.00 for each
- 18 page.
- 19 Filing transcript of death certificate, \$5.00.
- 20 Power of attorney, per page \$5.00 plus \$5.00 for certified mail.
- 21 Search fee, per estate \$10.00.
- 22 Proceedings relative to appointment of a guardian ad litem,
- 23 \$25.00.
- 24 Renunciation by one person, filing, entering and recording, or
- 25 photostating, \$5.00. Each additional person, \$3.00.
- 26 Caveat, filing or withdrawing, \$25.00.
- 27 Combined refunding bond and release of not more than two
- 28 pages, filing, entering, microfilming and recording, or photostating,
- 29 \$10.00. \$5.00 for each additional page. Additional charge for
- 30 county clerk's certificate, \$5.00.
- 31 Release of not more than two pages of refunding bond and
- 32 release, \$10.00. \$5.00 for each additional page. Additional charge
- 33 for county clerk's certificate, \$5.00.
- 34 Assignments of legacy or interest, \$10.00 per page, plus \$5.00
- 35 where county clerk's certificate is necessary.
- 36 Filing all papers not herein provided for, \$5.00, if microfilming
- 37 process is used, \$5.00 per page.
- 38 Plain copy of two-page will, \$6.00.
- 39 Each additional page, \$3.00.
- 40 Filing of motions in the Superior Court, Chancery Division,
- 41 Probate Part, \$15.00.
- 42 Notice of appeal (trial court), \$10.00.
- 43 Minimum charge for all other papers or services in proceedings
- 44 in the Superior Court, Chancery Division, Probate Part, \$5.00.
- 45 3B:14-48 Service of Process by Surrogate, \$25.00.
- 46 Duplicating or copying of microfiche, digital tape, high density
- 47 disks, optically scanned and recorded materials or for any other

1 media used to record or preserve records, \$150.00 per medium
2 recorded.

3 Processing fee for returned check, \$20.00 plus bank fee.
4 (cf: P.L.2005, c.370, s.14)

5
6 24. Section 48 of P.L.2005, c.304 (3B:12-66.1) is amended to
7 read as follows:

8 48. Removal from New Jersey after Appointment of Guardian.

9 a. A guardian appointed in this State desiring to move to
10 another state with his ward who is a minor shall obtain an order
11 from the Superior Court of this State consenting to the **[ward's]**
12 minor's removal and if applicable, the guardian's discharge. The
13 Superior Court may transfer the guardianship to another state if the
14 court is satisfied that a transfer will serve the best interest of the
15 **[ward]** minor.

16 b. The **[ward's]** minor's removal and discharge of the guardian
17 shall be on such terms as the Superior Court deems necessary,
18 including requiring filing and settlement of the guardian's account
19 and filing of an exemplified copy of the order evidencing the other
20 state court's acceptance of jurisdiction over the guardianship and the
21 guardian.
22 (cf: P.L.2005, c.304, s.48)

23
24 25. Section 49 of P.L.2005, c.304 (C.3B:12-66.2) is amended to
25 read as follows:

26 49. Transfer into New Jersey of Guardianship Established in
27 Another State.

28 a. A guardian or like fiduciary of a minor appointed in another
29 state may file a summary action in the Superior Court for the
30 transfer of the guardianship and the appointment as a guardian in
31 this State if domicile in this State is or will be established.

32 b. Notice of hearing shall be given to the **[ward]** minor and to
33 the persons who would be entitled to notice if the regular
34 procedures for appointment of a guardian under the New Jersey
35 Rules of Court were applicable.

36 c. The Superior Court shall grant an application for the transfer
37 of a guardianship established in another state unless the court
38 determines that the proposed guardianship is a collateral attack on
39 an existing or proposed guardianship or the transfer and
40 appointment would not be in the best interest of the **[ward]** minor.

41 d. An exemplified record of a court of competent jurisdiction
42 evidencing the original proceeding adjudicating the **[ward's]**
43 minor's incapacity and any amendment or modification orders
44 entered subsequent to the original judgment shall be filed with the
45 Superior Court. Subject to due process principles, full faith and
46 credit may be accorded to a court of another state's determination of
47 the **[ward's]** minor's incapacity. The Superior Court may fix the

1 rights, powers, and duties of the guardian that the court determines
2 are necessary to administer the [ward's] minor's person or estate,
3 or both person and estate, in this State.

4 e. The guardian shall give notice of the application to transfer
5 guardianship to the court of the other state.

6 (cf: P.L.2005, c.304, s.49)

7

8 26. (New section) Transitional provision.

9 a. P.L. , c. (C.) (pending before the Legislature as this
10 bill) applies to guardianship and protective proceedings filed on or
11 after the effective date.

12 b. Sections 1 through 4 of P.L. ,c. (C.)(pending before the
13 Legislature as this bill); sections 6 through 8 of P.L. ,
14 c. (C.)(pending before the Legislature as this bill); sections 17
15 through 21 of P.L. , c. (C.) (pending before the Legislature as
16 this bill); apply to proceedings begun before the effective date of
17 P.L. , c. (C.) (pending before the Legislature as this bill),
18 regardless of whether a guardianship or protective order has been
19 issued.

20

21 27. This act shall take effect on the 120th day after enactment.

22

23

24

STATEMENT

25

26 This bill enacts the "New Jersey Adult Guardianship and
27 Protective Proceedings Jurisdiction Act," recommended by the New
28 Jersey Law Revision Commission in its February 18, 2011 Final
29 Report. This bill is modeled after "Uniform Adult Guardianship
30 and Protective Proceedings Jurisdiction Act" (UAGPPJA) approved
31 in 2007 by the National Conference of Commissioners on Uniform
32 State Laws which has been adopted in 19 states and the District of
33 Columbia.

34 This bill would establish uniform procedures designed to address
35 interstate conflicts regarding adult guardianship issues. The purpose
36 of the bill is to provide a mechanism for consistent resolution of
37 those cases where an adult is subject to guardianship proceedings in
38 more than one state or in a state and another country, where he has
39 contacts or property in each place. The bill sets forth procedures
40 with regard to sharing of the information between courts concerning
41 guardianship and protective proceedings. Such information
42 includes: testimony; evidence; evaluations and assessments;
43 transcripts; and medical, financial, criminal or other relevant
44 information.

45 For consistency within the statutes, this bill will also amend two
46 recent enactments, sections 48 and 49 of P.L.2005, c.304 (C.3B:12-
47 66.1 and C.3B:12-66.2), concerning transfer of guardianship

1 services between states, to make these sections applicable to only
2 minors.

3 *Jurisdiction*

4 Under the provisions of the bill, a court of this State would have
5 jurisdiction to appoint a guardian or issue a protective order for an
6 individual for whom the appointment of a guardian or the issuance
7 of a protective order is sought (*known as respondent*) if: (1) this
8 State is that person's "home state"; or (2) on the date the petition is
9 filed this State is a state with a "significant connection" ; or (3) if
10 the home state and all significant connection states have declined
11 jurisdiction. The bill defines "home state" as the state in which the
12 respondent was physically present, including any period of
13 temporary absence, for at least six consecutive months *immediately*
14 *before the filing*; or if none, the state in which the respondent was
15 physically present, including any period of temporary absence, for
16 at least six consecutive months *ending within the six months* prior to
17 the filing of the petition. A state with a "significant connection" is a
18 state, other than a home state, with which a respondent has a
19 significant connection other than mere physical presence and where
20 substantial evidence concerning the respondent is available. In
21 order to determine whether a significant connection exists, the court
22 must consider the following factors: (a) the location of the
23 respondent's family and other persons required to be notified of the
24 guardianship or protective proceeding; (b) the length of time the
25 respondent at any time was physically present in the state and the
26 duration of any absence; (c) the location of the respondent's
27 property; and (d) the extent to which the respondent has ties to the
28 state such as voting registration, state or local tax return filing,
29 vehicle registration, driver's license, social relationship, and receipt
30 of services.

31 *Communication and cooperation between Courts*

32 This bill provides that a court of this State may communicate
33 with a court of another state concerning a proceeding arising under
34 this bill. The court may allow the parties to participate in the
35 communication in accordance with the Rules Governing the Courts
36 of the State of New Jersey. The record may be limited to the fact
37 that the communication occurred. Courts may communicate
38 concerning schedules, calendars, court records, and other
39 administrative matters without making a record.

40 This bill insures communication between courts by providing
41 that a court in this State may request the out-of-state court to hold
42 evidentiary hearings, order evaluations or assessments be made,
43 order a person in that state to produce evidence or give testimony,
44 and order any other appropriate investigation. The out-of-state court
45 would forward a certified copy of the transcript or other record of
46 the hearing, any evidence produced, and any evaluation or
47 assessment prepared in compliance with an order. The court in this
48 State may request the out-of-state court to issue any order necessary

1 to assure the appearance in the proceeding of a person whose
2 presence is necessary for the court to make a determination. The bill
3 also provides that the court in this State can request the out-of-state
4 court to issue an order authorizing the release of any medical,
5 financial, criminal, or other relevant information in that state,
6 including protected health information which meets federal and
7 state privacy laws. The bill also provides that an out of state court
8 in which a guardianship or protective proceeding is pending
9 requests assistance, a court of this State has jurisdiction for the
10 limited purpose of granting the request or making reasonable efforts
11 to comply with the request.

12 *Testimony and Documentary Evidence*

13 The bill provides that a court of this State may permit a witness
14 located in another state to be deposed or to testify by any means
15 permitted by the Rules Governing the Courts of the State of New
16 Jersey. A court of this State would cooperate with the court of
17 another state in designating an appropriate location for the
18 deposition or testimony. Documentary evidence transmitted from
19 another state to a court of this State may be admitted into evidence
20 consistent with the New Jersey Rules of Evidence.

21 *Emergency Jurisdiction*

22 Under the bill, a court would have emergency jurisdiction even if
23 it lacks “home state” or “significant connection” jurisdiction.
24 Emergency jurisdiction allows the court to: (1) appoint a guardian
25 or issue a protective order in an emergency, in accordance with
26 subsection c of section 12 of P.L.2005, c.304 (C.3B:12-24.1), for a
27 respondent who is physically present in this State; (2) appoint a
28 guardian of real or tangible personal property located in this State
29 for which the respondent has an ownership interest; (3) issue a
30 protective order with respect to real or tangible personal property in
31 this State; or (4) appoint a guardian or conservator for an
32 incapacitated or protected person for whom a provisional order to
33 transfer the proceeding from another state has been issued. The bill
34 provides that if a petition for the appointment of a guardian or
35 issuance of a protective order in an emergency is brought in this
36 State and this State was not the respondent’s home state on the date
37 the petition was filed, the court shall dismiss the proceeding at the
38 request of the court of the home state, if any, whether dismissal is
39 requested before or after the emergency appointment.

40 *Exclusive and Continuing Jurisdiction*

41 The bill provides that a court that has appointed a guardian or
42 issued a protective order consistent with the provisions of the act
43 would have exclusive and continuing jurisdiction over the
44 proceedings until the proceeding is terminated by the court or the
45 appointment or order expires on its own terms. This section
46 exempts a court which has attained emergency jurisdiction.

1 *Appropriate Forum*

2 Under the provisions of the bill, a court of this State which has
3 jurisdiction under the act may decline to exercise jurisdiction if it
4 determines at any time that a court of another state is a more
5 appropriate forum. Once jurisdiction is declined, the court shall
6 either dismiss or stay the proceeding. The court may impose any
7 condition it deems just and proper, including the condition that a
8 petition for the appointment of a guardian or issuance of a
9 protective order be filed promptly in another state.

10 The bill enumerates the relevant factors the court must consider
11 in making this determination which include: (1) expressed
12 preference of the respondent; (2) whether abuse, neglect, or
13 exploitation of the respondent has occurred or is likely to occur and
14 which state could best protect the respondent from the abuse,
15 neglect, or exploitation; (3) the length of time the respondent was
16 physically present in or was a legal resident of this or another state;
17 (4) the distance of the respondent from the court in each state; (5)
18 the financial circumstances of the respondent's estate; (6) the nature
19 and location of the evidence; (7) the ability of the court in each state
20 to decide the issue expeditiously and the procedures necessary to
21 present evidence; (8) the familiarity of the court of each state with
22 the facts and issues in the proceeding; and (9) if an appointment
23 were to be made, the court's ability to monitor the conduct of the
24 guardian or the conservator.

25 *Decline of Jurisdiction by Reason of Conduct*

26 If at any time a court of this State determines that it acquired
27 jurisdiction to appoint a guardian or issue a protective order because
28 of unjustifiable conduct, the court may: (1) decline to exercise
29 jurisdiction; (2) exercise jurisdiction for the limited purpose to
30 ensure the health, safety, and welfare of the respondent or the
31 protection of the respondent's property or prevent a repetition of the
32 unjustifiable conduct; or (3) continue to exercise jurisdiction.

33 If the court determines that it acquired jurisdiction because a
34 party seeking to invoke its jurisdiction engaged in unjustifiable
35 conduct, it may assess against that party necessary and reasonable
36 expenses, including attorneys' fees, investigative fees, court costs,
37 communication expenses, witness fees and expenses, and travel
38 expenses. However, the court may not assess fees, costs, or
39 expenses of any kind against the state.

40 *Proceedings in more than one state*

41 If the court has jurisdiction, the court may proceed unless a court
42 of another state acquires jurisdiction prior to the first court making
43 an appointment or issuing a protective order. If the court does not
44 have jurisdiction, whether at the time the complaint is filed or at
45 any time before the appointment or issuance of the order, the court
46 would stay the proceeding and communicate with the other court. If
47 the court in the other state has jurisdiction, the court of this State

1 would dismiss the complaint unless the court in the other state
2 determines that the court of this State is a more appropriate forum.

3 *Transfer of Guardianship or Conservatorship to Another State*

4 A guardian or conservator appointed in this State may petition
5 the court, under the provisions of the bill, to transfer the
6 guardianship or conservatorship to another state. Notice of the
7 petition to transfer would be given to those individuals required to
8 be given notice of a guardianship proceeding. The court is required
9 to hold a hearing on a petition to transfer.

10 Under the provisions of the bill, the court issues an order
11 provisionally granting petition to transfer a guardianship or a
12 conservatorship if it finds that: (1) the person is physically present
13 in or is reasonably expected to move permanently to the other state
14 or the person has a significant connection to the other state; (2) an
15 objection to the transfer has not been made or, that the transfer
16 would not be contrary to the interests of the incapacitated person;
17 and (3) plans for care and services or management of the person's
18 property in the other state are reasonable and sufficient.

19 A final order is issued confirming the transfer upon receipt of a
20 provisional order and receipt of the documents required to terminate
21 a guardianship or conservatorship in this State.

22 *Accepting Guardianship or Conservatorship Transferred from*
23 *Another State*

24 To confirm transfer of a guardianship or conservatorship to this
25 State, the guardian or conservator in the other state is required to
26 petition the court to accept the guardianship of the person or the
27 person's property, or both, or the conservatorship. Notice is
28 required to be given to all those parties who would receive notice in
29 a guardianship or conservator appointment proceeding. Under the
30 provisions of the bill, the court holds a hearing to provisionally
31 grant relief unless: an objection is made and the court determines
32 that transfer of the proceeding would be contrary to the interests of
33 the incapacitated or protected person; or the guardian or conservator
34 is ineligible for appointment in this State.

35 A final order is issued upon the receipt final order which
36 transferred the proceeding to this State.

37 The bill also provides that the court, upon its own motion or
38 upon an application of a party, can determine whether the
39 guardianship or the conservatorship needs to be modified.

40 The court may either grant or deny the petition. A denial does
41 not affect the ability of the guardian or conservator to seek
42 appointment pursuant to the laws of this State, if the court has
43 jurisdiction to make an appointment other than by reason of the
44 provisional order of transfer.

45 *Registration of Guardianship or Conservatorship Orders and its*
46 *Effect*

47 If a guardian has been appointed in another state and an
48 application for guardianship or conservatorship is not pending, that

1 guardian or conservator may register the order in this State by filing
2 with the court certified copies of the order and letters of office, and
3 of any bond, as appropriate.

4 Once the orders have been registered, the guardian or
5 conservator may exercise in this State all powers authorized in the
6 order of appointment except as prohibited under the laws of this
7 State, including maintaining actions and proceedings in this State
8 and, if the guardian or conservator is not a resident of this State,
9 subject to any conditions imposed upon nonresident parties. A court
10 of this State can grant any relief available under this bill and other
11 law of this State to enforce a registered order. However, a court of
12 this State cannot modify an order.

13 *N.J.S.A.3B:12-29*

14 The bill amends N.J.S.A.3B:12-29, concerning appointment of
15 guardian of the property for a non-resident, to make the provisions
16 of that section apply to minors.

17 *Guardianship Fee*

18 The bill would provide for \$175 fee for a filing under the
19 provisions of this bill.

20 *N.J.S.A.3B:12-66.1 and N.J.S.A.3B:12-66.2*

21 This bill amends N.J.S.A.3B:12-66.1 and N.J.S.A.3B:12-66.2 to
22 have the provisions of these sections apply to only minors. As
23 enacted in 2005, these sections established procedures for the
24 transfer of guardianship services when a guardian in this State is
25 seeking to move to another state or a guardian in another state is
26 seeking to transfer services into New Jersey.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2628

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 14, 2012

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2628.

This bill enacts the “New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act,” recommended by the New Jersey Law Revision Commission in its February 18, 2011 Final Report. The bill is modeled after the “Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act” approved in 2007 by the National Conference of Commissioners on Uniform State Laws.

This bill would establish uniform procedures to resolve interstate conflicts and uncertainty in cases when an adult is subject to guardianship proceedings in more than one state, or in a state and another country, where the adult has contacts or property in each place. The bill sets forth procedures with regard to sharing of information between courts concerning guardianship and protective proceedings.

JURISDICTION

The bill sets forth the procedures to be followed to resolve a variety of jurisdictional issues that may arise in guardianship proceedings concerning an individual. These issues include: the appointment of a guardian or issuance of a protective order; communications between courts in more than one jurisdiction, permitting parties to participate in those communications; providing for the deposition and testimony of witnesses; transmission of documentary evidence from another jurisdiction to a court of this State; provisions for the exercise of emergency jurisdiction; provisions for a court of this State to decline to exercise jurisdiction if it determines that a court of another state is the more appropriate forum; and resolving situations when proceedings concerning an individual have begun in more than one state.

Under the bill, a court of this State would have jurisdiction to appoint a guardian or issue a protective order for an individual for whom the appointment of a guardian or the issuance of a protective order is sought if: (1) this State is that individual’s “home state”; or (2) on the date the petition is filed, this State is a state with a “significant connection”; or (3) if the home state and all significant connection

states have declined jurisdiction. The bill defines “home state” as the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition. A state with a “significant connection” is a state, other than a home state, with which a respondent has a significant connection other than mere physical presence and where substantial evidence concerning the respondent is available. The bill sets forth the various factors to be considered by the court in making this jurisdictional determination.

The committee amended the definitional section of the bill to add new definitions and to clarify terminology which may differ in use in this State as compared with the model act and other states, such as: “conservatee” (a person who has not been adjudicated incapacitated but who by reason of advanced age or physical infirmity is unable to manage his property or who has become unable to provide for himself or others dependent upon him); “guardianship order” and “guardianship proceeding” (an order declaring a person incapacitated and appointing a guardian, and a judicial proceeding in which such an appointment is sought); “incapacitated person” (an adult declared incapacitated and for whom a guardian has been appointed); “protective order” (an order issued pursuant to the provisions of current law); “petition” (an initiating court document such as a verified complaint); and “registration” (filing in this State of an out-of-State guardianship or conservatorship order). In addition, throughout the bill certain references to a person’s “property” are changed to “estate.”

COMMUNICATION AND COOPERATION BETWEEN COURTS

The bill provides that a court in this State may communicate with a court of another state concerning a proceeding and allow parties to participate in the communication, in accordance with the Rules Governing the Courts of the State of New Jersey. The bill specifies that a court of this State may request that the out-of-State court hold evidentiary hearings and issue various orders, as appropriate. The bill also provides that if an out-of-State court in which a guardianship or protective proceeding is pending requests assistance, a court of this State has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

TESTIMONY AND DOCUMENTARY EVIDENCE

A court of this State may permit a witness located in another state to be deposed or to testify by any means permitted by the Rules Governing the Courts of the State of New Jersey, and a court of this State would be required to cooperate with the court of another state in arranging for the deposition or testimony. Documentary evidence transmitted from another state to a court of this State may be admitted into evidence consistent with the New Jersey Rules of Evidence.

EMERGENCY JURISDICTION

A court would have emergency jurisdiction even if it lacks “home state” or “significant connection” jurisdiction. Emergency jurisdiction allows the court to: (1) appoint a guardian or issue a protective order in an emergency for a respondent who is physically present in this State, in accordance with State law; (2) appoint a guardian of real or tangible personal property located in this State for which the respondent has an ownership interest; (3) issue a protective order with respect to real or tangible personal property in this State; or (4) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued. The bill provides that if a petition for the appointment of a guardian or issuance of a protective order in an emergency is brought in this State and this State was not the respondent’s home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

EXCLUSIVE AND CONTINUING JURISDICTION

Except in cases where a court has attained emergency jurisdiction, a court that has appointed a guardian or issued a protective order pursuant to the provisions of the bill would have exclusive and continuing jurisdiction over the proceedings until the proceeding is terminated by the court or the appointment or order expires.

APPROPRIATE FORUM

The bill provides that a court of this State having jurisdiction could decline to exercise jurisdiction if it determined at any time that a court of another state were the more appropriate forum. Once jurisdiction is declined, the court would have to dismiss or stay the proceeding.

The bill enumerates the relevant factors the court must consider in making this determination which include: (1) any expressed preference of the respondent; (2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation; (3) the length of time the respondent was physically present in or was a legal resident of this or another state; (4) the distance of the respondent from the court in each state; (5) the financial circumstances of the respondent’s estate; (6) the nature and location of the evidence; (7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence; (8) the familiarity of the court of each state with the facts and issues in the proceeding; and (9) if an appointment were to be made, the court’s ability to monitor the conduct of the guardian or the conservator.

DECLINE OF JURISDICTION BY REASON OF CONDUCT

If, at any time, a court of this State determines that it acquired jurisdiction to declare a person incapacitated, appoint a guardian or issue a protective order because of unjustifiable conduct, the court may: (1) decline to exercise jurisdiction; (2) exercise jurisdiction for

the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct; or (3) continue to exercise jurisdiction. If the court determines that it acquired jurisdiction because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorneys' fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. However, the court may not assess fees, costs, or expenses of any kind against the State or governmental subdivision.

PROCEEDINGS IN MORE THAN ONE STATE

If the court has jurisdiction, the court may proceed unless a court of another state acquired jurisdiction prior to the first court making an appointment or issuing a protective order. If the court does not have jurisdiction, the court would stay the proceeding and communicate with the other court. If the court in the other state has jurisdiction, the court of this State would dismiss the petition, unless the court in the other state determines that the court of this State is a more appropriate forum.

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE AND ACCEPTANCE OF GUARDIANSHIP FROM ANOTHER STATE

The bill provides that a guardian or conservator appointed in this State may petition the court to transfer the guardianship or conservatorship to another state and sets forth the procedural requirements for doing so. To confirm transfer of a guardianship or conservatorship to this State, the guardian or conservator in the other state would be required to petition the court to accept the guardianship or conservatorship, following procedures set forth in the bill.

REGISTRATION OF GUARDIANSHIP OR CONSERVATORSHIP ORDERS

If a guardian has been appointed in another state and an application for guardianship or conservatorship is not pending, that guardian or conservator may register the order in this State by filing with the court certified copies of the order and letters of office, and of any bond, as appropriate. Once the order has been registered, 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.

The committee amended this section of the bill to clarify that the guardianship or conservatorship order would be filed with the Surrogate, as Deputy Clerk of the Superior Court, Chancery Division, Probate Part, pursuant to Rules of Court.

EXISTING STATUTES

For purposes of consistency within the statutes, sections 48 and 49 of P.L.2005, c.304 (C.3B:12-66.1 and C.3B:12-66.2), concerning transfer of guardianship services between states, are amended to make these sections apply only to minors.

The original bill amended N.J.S.A. 22A:2-30 to provide for an increase in the filing fees for guardianship orders. The amendments eliminate this filing fee increase. The original bill also amended N.J.S.3B:12-29 concerning appointment of a guardian of a non-resident minor; however, since the bill's provisions obviate the need for this section the committee amendments repeal N.J.S.3B:12-29.

These amendments make this bill identical to Senate Bill No.1755 (1R).

COMMITTEE AMENDMENTS

1. Amend section 3 to add or clarify the definitions for the following terms: "conservatee;" "guardianship order and guardianship proceeding;" "incapacitated person;" "protective order;" "petition;" and "registration."
2. Change certain references to a person's "property" to "estate."
3. Amend section 19 so that registration of guardianship or conservatorship orders would be filed with the Surrogate, as Deputy Clerk of the Superior Court, Chancery Division, Probate Part, pursuant to Rules of Court.
4. Amend section 20 to correct a statutory reference.
5. Omit sections 22 (N.J.S.3B:12-29, appointment of nonresident guardians) and 23 (N.J.S.22A:2-30, fees).
6. Insert new section 25 repealing N.J.S.3B:12-29 as it is obviated by the bill.