S T A T E O F N E W Y O R K

7464

I N S E N A T E

May 23, 2012

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law and the surrogate's court procedure act, in relation to establishing the uniform guardianship and protective proceedings jurisdiction act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The mental hygiene law is amended by adding a new article 83 to read as follows:

ARTICLE 83

UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

SECTION 83.01 SHORT TITLE.
83.03 DEFINITIONS.
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83.35 REGISTRATION OF ORDERS APPOINTING A GUARDIAN OF THE PERSON.
83.37 REGISTRATION OF PROTECTIVE ORDERS.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

83.39 EFFECT OF REGISTRATION.
83.41 UNIFORMITY OF APPLICATION AND CONSTRUCTION.
83.43 RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.
83.45 TRANSITIONAL PROVISION.

S 83.01 SHORT TITLE.

THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT".

S 83.03 DEFINITIONS.

FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING DEFINITIONS SHALL APPLY:

(A) "ADULT" MEANS AN INDIVIDUAL WHO HAS ATTAINED EIGHTEEN YEARS OF AGE.

(B) "EMERGENCY" MEANS A CIRCUMSTANCE THAT LIKELY WILL RESULT IN SUBSTANTIAL HARM TO A RESPONDENT'S HEALTH, SAFETY OR WELFARE, AND FOR WHICH THE APPOINTMENT OF A GUARDIAN IS NECESSARY BECAUSE NO OTHER PERSON HAS AUTHORITY AND IS WILLING TO ACT ON THE RESPONDENT'S BEHALF.

(C) "GUARDIAN OF THE PROPERTY" MEANS A PERSON APPOINTED BY THE COURT TO ADMINISTER THE PROPERTY OF AN ADULT, INCLUDING A PERSON APPOINTED UNDER ARTICLE EIGHTY-ONE OF THIS TITLE AND ARTICLE SEVENTEEN-A OF THE SURROGATE'S COURT PROCEDURE ACT, AND INCLUDING A CONSERVATOR APPOINTED BY A COURT IN ANOTHER STATE.

(D) "GUARDIAN OF THE PERSON" MEANS A PERSON APPOINTED BY THE COURT TO MAKE DECISIONS REGARDING THE PERSON OF AN ADULT, INCLUDING A PERSON APPOINTED UNDER ARTICLE EIGHTY-ONE OF THIS TITLE AND ARTICLE SEVENTEEN-A OF THE SURROGATE'S COURT PROCEDURE ACT.

(E) "HOME STATE" MEANS 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 OF A PETITION FOR A PROTECTIVE ORDER OR THE APPOINTMENT OF A GUARDIAN OF THE PERSON; 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.

(F) "PARTY" MEANS THE RESPONDENT, PETITIONER, GUARDIAN OF THE PERSON, CONSERVATOR GUARDIAN OF THE PROPERTY, OR ANY OTHER PERSON ALLOWED BY THE COURT TO PARTICIPATE IN A GUARDIANSHIP PROCEEDING FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON OR A PROTECTIVE PROCEEDING.

(G) "PERSON", EXCEPT IN THE TERM INCAPACITATED PERSON FOR WHOM A GUARDIAN OF THE PERSON HAS BEEN APPOINTED OR PROTECTED PERSON, MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT VENTURE, PUBLIC CORPORATION, GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY OR INSTRUMENTALITY, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

(H) "PROTECTED PERSON" MEANS AN ADULT FOR WHOM A PROTECTIVE ORDER HAS BEEN ISSUED.

(I) "PROTECTIVE ORDER" MEANS AN ORDER APPOINTING A CONSERVATOR GUARDIAN OF THE PROPERTY OR OTHER ORDER RELATED TO MANAGEMENT OF AN ADULT'S PROPERTY.

(J) "PROTECTIVE PROCEEDING" MEANS A JUDICIAL PROCEEDING IN WHICH A PROTECTIVE ORDER IS SOUGHT OR HAS BEEN ISSUED.

(K) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

(L) "RESPONDENT" MEANS AN ADULT FOR WHOM A PROTECTIVE ORDER OR THE APPOINTMENT OF A GUARDIAN OF THE PERSON IS SOUGHT.

(M) "SIGNIFICANT-CONNECTION STATE" MEANS A STATE, OTHER THAN THE HOME STATE, WITH WHICH A RESPONDENT HAS A SIGNIFICANT CONNECTION OTHER THAN

MERE PHYSICAL PRESENCE AND IN WHICH SUBSTANTIAL EVIDENCE CONCERNING THE RESPONDENT IS AVAILABLE.

(N) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, A FEDERALLY RECOGNIZED INDIAN TRIBE, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

S 83.05 INTERNATIONAL APPLICATION OF THIS ARTICLE.

A COURT OF THIS STATE MAY TREAT A FOREIGN COUNTRY AS IF IT WERE A STATE FOR THE PURPOSE OF APPLYING SECTIONS 83.01 THROUGH 83.37 OF THIS ARTICLE.

S 83.07 COMMUNICATION BETWEEN COURTS.

(A) A COURT OF THIS STATE MAY COMMUNICATE WITH A COURT IN ANOTHER STATE CONCERNING A PROCEEDING ARISING UNDER THIS ARTICLE. THE COURT MAY ALLOW THE PARTIES TO PARTICIPATE IN THE COMMUNICATION.

(B) IF THE PARTIES ARE NOT ALLOWED TO PARTICIPATE IN THE COMMUNICATION, THE COURT SHALL GIVE ALL PARTIES THE OPPORTUNITY TO PRESENT FACTS AND LEGAL ARGUMENTS BEFORE THE COURT ISSUES AN ORDER ESTABLISHING JURISDICTION.

(C) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (D) OF THIS SECTION, THE COURT SHALL MAKE A RECORD OF ANY COMMUNICATION UNDER THIS SECTION AND PROMPTLY INFORM THE PARTIES OF THE COMMUNICATION AND GRANT THEM ACCESS TO THE RECORD.

(D) COURTS MAY COMMUNICATE CONCERNING SCHEDULES, CALENDARS, COURT RECORDS AND OTHER ADMINISTRATIVE MATTERS WITHOUT MAKING A RECORD.

S 83.09 COOPERATION BETWEEN COURTS.

(A) IN A PROCEEDING FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON OR PROTECTIVE PROCEEDING IN THIS STATE, A COURT OF THIS STATE MAY REQUEST THE APPROPRIATE COURT OF ANOTHER STATE TO DO ANY OF THE FOLLOWING:

1. HOLD AN EVIDENTIARY HEARING;

2. ORDER A PERSON IN THAT STATE TO PRODUCE EVIDENCE OR GIVE TESTIMONY PURSUANT TO PROCEDURES OF THAT STATE;

3. ORDER THAT AN EVALUATION OR ASSESSMENT BE MADE OF THE RESPONDENT;

4. ORDER ANY APPROPRIATE INVESTIGATION OF A PERSON INVOLVED IN A PROCEEDING;

5. FORWARD TO THE COURT OF THIS STATE A CERTIFIED COPY OF THE TRANSCRIPT OR OTHER RECORD OF A HEARING UNDER PARAGRAPH ONE OF THIS SUBDIVISION OR ANY OTHER PROCEEDING, ANY EVIDENCE OTHERWISE PRODUCED UNDER PARAGRAPH TWO OF THIS SUBDIVISION, AND ANY EVALUATION OR ASSESSMENT PREPARED IN COMPLIANCE WITH AN ORDER UNDER PARAGRAPH THREE OR FOUR OF THIS SUBDIVISION;

6. ISSUE ANY ORDER NECESSARY TO ASSURE THE APPEARANCE IN THE PROCEEDING OF A PERSON WHOSE PRESENCE IS NECESSARY FOR THE COURT TO MAKE A DETERMINATION, INCLUDING THE RESPONDENT OR THE PERSON SUBJECT TO A GUARDIANSHIP OF THE PERSON OR PROTECTED PERSON; AND

7. ISSUE AN ORDER AUTHORIZING THE RELEASE OF MEDICAL, FINANCIAL, CRIMINAL, OR OTHER RELEVANT INFORMATION IN THAT STATE, INCLUDING PROTECTED HEALTH INFORMATION.

(B) THE COURT MAY RECEIVE ANY EVIDENCE PRODUCED PURSUANT TO SUBDIVISION (A) OF THIS SECTION IN THE SAME MANNER THAT IT WOULD ADMIT INTO EVIDENCE THE REPORT OF A COURT EVALUATOR AFTER THE COURT EVALUATOR HAD BEEN SUBJECT TO CROSS EXAMINATION;

(C) IF A COURT OF ANOTHER STATE IN WHICH A GUARDIANSHIP OR PROTECTIVE PROCEEDING IS PENDING REQUESTS ASSISTANCE OF THE KIND PROVIDED IN SUBDIVISION (A) OF THIS SECTION, A COURT OF THIS STATE HAS JURISDICTION FOR THE LIMITED PURPOSE OF GRANTING THE REQUEST OR MAKING REASONABLE EFFORTS TO COMPLY WITH THE REQUEST.

S 83.11 TAKING TESTIMONY IN ANOTHER STATE.

(A) IN A PROCEEDING FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON OR PROTECTIVE PROCEEDING, IN ADDITION TO OTHER PROCEDURES THAT MAY BE AVAILABLE, TESTIMONY OF A WITNESS WHO IS LOCATED IN ANOTHER STATE MAY BE OFFERED BY DEPOSITION OR OTHER MEANS ALLOWABLE IN THIS STATE FOR TESTIMONY TAKEN IN ANOTHER STATE. THE COURT ON ITS OWN MOTION MAY ORDER THAT THE TESTIMONY OF A WITNESS BE TAKEN IN ANOTHER STATE AND MAY PRESCRIBE THE MANNER IN WHICH AND THE TERMS UPON WHICH THE TESTIMONY IS TO BE TAKEN.

(B) IN A PROCEEDING FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON OR PROTECTIVE PROCEEDING, A COURT IN THIS STATE MAY PERMIT A WITNESS LOCATED IN ANOTHER STATE TO BE DEPOSED OR TO TESTIFY BY TELEPHONE OR AUDIOVISUAL OR OTHER ELECTRONIC MEANS. A COURT OF THIS STATE SHALL COOPERATE WITH THE COURT OF THE OTHER STATE IN DESIGNATING AN APPROPRIATE LOCATION FOR THE DEPOSITION OR TESTIMONY.

(C) DOCUMENTARY EVIDENCE TRANSMITTED FROM ANOTHER STATE TO A COURT OF THIS STATE BY TECHNOLOGICAL MEANS THAT DO NOT PRODUCE AN ORIGINAL WRITING MAY NOT BE EXCLUDED FROM EVIDENCE ON AN OBJECTION BASED ON THE BEST EVIDENCE RULE.

S 83.13 SIGNIFICANT CONNECTION FACTORS.

IN DETERMINING UNDER SECTION 83.17 AND SUBDIVISION (E) OF SECTION 83.31 OF THIS ARTICLE WHETHER A RESPONDENT HAS A SIGNIFICANT CONNECTION WITH A PARTICULAR STATE, THE COURT SHALL CONSIDER:

(A) THE LOCATION OF THE RESPONDENT'S FAMILY AND OTHER PERSONS REQUIRED TO BE NOTIFIED OF THE PROCEEDING;

(B) THE LENGTH OF TIME THE RESPONDENT AT ANY TIME WAS PHYSICALLY PRESENT IN THE STATE AND THE DURATION OF ANY ABSENCE;

(C) THE LOCATION OF THE RESPONDENT'S PROPERTY; AND

(D) THE EXTENT TO WHICH THE RESPONDENT HAS TIES TO THE STATE SUCH AS VOTING REGISTRATION, STATE OR LOCAL TAX RETURN FILING, VEHICLE REGISTRATION, DRIVER'S LICENSE, SOCIAL RELATIONSHIP, AND RECEIPT OF SERVICES.

S 83.15 EXCLUSIVE BASIS.

SUBJECT TO SECTION 81.18 OF THIS TITLE, THIS ARTICLE PROVIDES THE EXCLUSIVE JURISDICTIONAL BASIS FOR A COURT OF THIS STATE TO APPOINT A GUARDIAN OF THE PERSON OR ISSUE A PROTECTIVE ORDER FOR AN ADULT.

S 83.17 JURISDICTION.

A COURT OF THIS STATE HAS JURISDICTION TO APPOINT A GUARDIAN OF THE PERSON OR ISSUE A PROTECTIVE ORDER FOR A RESPONDENT IF:

(A) THE STATE IS THE RESPONDENT'S HOME STATE;

(B) ON THE DATE THE PETITION IS FILED, THIS STATE IS A SIGNIFICANT-CONNECTION STATE AND: 1. THE RESPONDENT DOES NOT HAVE A HOME STATE OR A COURT OF THE RESPONDENT'S HOME STATE HAS DECLINED TO EXERCISE JURISDICTION BECAUSE THIS STATE IS A MORE APPROPRIATE FORUM; OR 2. THE RESPONDENT HAS A HOME STATE, A PETITION FOR AN APPOINTMENT OR ORDER IS NOT PENDING IN A COURT OF THAT STATE OR ANOTHER SIGNIFICANT CONNECTION STATE, AND BEFORE THE COURT MAKES THE APPOINTMENT OR ISSUES THE ORDER:

(I) A PETITION FOR AN APPOINTMENT OR ORDER IS NOT FILED IN THE RESPONDENT'S HOME STATE;

(II) AN OBJECTION TO THE COURT'S JURISDICTION IS NOT FILED BY A PERSON REQUIRED TO BE NOTIFIED OF THE PROCEEDING; AND

(III) THE COURT IN THIS STATE CONCLUDES THAT IT IS AN APPROPRIATE FORUM UNDER THE FACTORS SET FORTH IN SECTION 83.21 OF THIS ARTICLE;

(C) THIS STATE DOES NOT HAVE JURISDICTION UNDER EITHER SUBDIVISION (A) OR (B) OF THIS SECTION, THE RESPONDENT'S HOME STATE AND ALL SIGNIFICANT-CONNECTION STATES HAVE DECLINED TO EXERCISE JURISDICTION BECAUSE THIS STATE IS THE MORE APPROPRIATE FORUM, AND JURISDICTION IN THIS STATE

IS CONSISTENT WITH THE CONSTITUTIONS OF THIS STATE AND THE UNITED STATES; OR

(D) THE REQUIREMENTS FOR SPECIAL JURISDICTION UNDER SECTION 83.19 OF THIS ARTICLE ARE MET.

S 83.19 SPECIAL JURISDICTION.

(A) A COURT OF THIS STATE LACKING JURISDICTION UNDER SECTION 83.17 OF THIS ARTICLE HAS SPECIAL JURISDICTION TO DO ANY OF THE FOLLOWING:

1. APPOINT A GUARDIAN OF THE PERSON IN AN EMERGENCY FOR A TERM NOT EXCEEDING NINETY DAYS FOR A RESPONDENT WHO IS PHYSICALLY PRESENT IN THIS STATE;

2. ISSUE A PROTECTIVE ORDER WITH RESPECT TO A REAL OR TANGIBLE PERSONAL PROPERTY LOCATED IN THIS STATE; AND

3. APPOINT A GUARDIAN OF THE PERSON OR A GUARDIAN OF THE PROPERTY FOR A PERSON SUBJECT TO A GUARDIANSHIP OF THE PERSON OR PROTECTED PERSON FOR WHOM A PROVISION ORDER TO TRANSFER THE PROCEEDING FROM ANOTHER STATE HAS BEEN ISSUED UNDER PROCEDURES SIMILAR TO SECTION 83.31 OF THIS ARTICLE.

(B) IF A PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON 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.

S 83.21 EXCLUSIVE AND CONTINUING JURISDICTION.

EXCEPT AS OTHERWISE PROVIDED IN SECTION 83.19 OF THIS ARTICLE, A COURT THAT HAS APPOINTED A GUARDIAN OF THE PERSON OR ISSUED A PROTECTIVE ORDER CONSISTENT WITH THIS ARTICLE HAS EXCLUSIVE AND CONTINUING JURISDICTION OVER THE PROCEEDINGS UNTIL IT IS TERMINATED BY THE COURT OR THE APPOINTMENT OR ORDER EXPIRES BY ITS OWN TERMS.

S 83.23 APPROPRIATE FORUM.

(A) A COURT OF THIS STATE HAVING JURISDICTION UNDER SECTION 83.17 OF THIS ARTICLE TO APPOINT A GUARDIAN OF THE PERSON OR ISSUE A PROTECTIVE ORDER MAY DECLINE TO EXERCISE ITS JURISDICTION IF IT DETERMINES AT ANY TIME THAT A COURT OF ANOTHER STATE IS A MORE APPROPRIATE FORUM.

(B) IF A COURT OF THIS STATE DECLINES TO EXERCISE ITS JURISDICTION UNDER SUBDIVISION (A) OF THIS SECTION, IT SHALL EITHER DISMISS OR STAY THE PROCEEDING. THE COURT MAY IMPOSE ANY CONDITION THE COURT CONSIDERS JUST AND PROPER, INCLUDING THE CONDITION THAT A PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON OR ISSUANCE OF A PROTECTIVE ORDER BE FILED PROMPTLY IN ANOTHER STATE.

(C) IN DETERMINING WHETHER IT IS AN APPROPRIATE FORUM, THE COURT SHALL CONSIDER ALL RELEVANT FACTORS, INCLUDING:

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 MADE, THE COURT'S ABILITY TO MONITOR THE CONDUCT OF THE GUARDIAN OR CONSERVATOR.

S 83.25 JURISDICTION DECLINED BY REASON OF CONDUCT.

(A) IF AT ANY TIME A COURT OF THIS STATE DETERMINES THAT IT ACQUIRED JURISDICTION TO APPOINT A GUARDIAN OF THE PERSON 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, INCLUDING STAYING THE PROCEEDING UNTIL A PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON OR ISSUANCE OF A PROTECTIVE ORDER IS FILED IN A COURT OF ANOTHER STATE HAVING JURISDICTION; OR

3. CONTINUE TO EXERCISE JURISDICTION AFTER CONSIDERING:

(I) THE EXTENT TO WHICH THE RESPONDENT AND ALL PERSONS REQUIRED TO BE NOTIFIED OF THE PROCEEDINGS HAVE ACQUIESCED IN THE EXERCISE OF THE COURT'S JURISDICTION;

(II) WHETHER IT IS A MORE APPROPRIATE FORUM THAN THE COURT OF ANY OTHER STATE UNDER THE FACTORS SET FORTH IN SECTION SUBDIVISION (C) OF SECTION 83.23 OF THIS ARTICLE; AND

(III) WHETHER THE COURT OF ANY OTHER STATE WOULD HAVE JURISDICTION UNDER FACTUAL CIRCUMSTANCES IN SUBSTANTIAL CONFORMITY WITH THE JURISDICTIONAL STANDARDS OF SECTION 83.17 OF THIS ARTICLE.

(B) IF A COURT OF THIS STATE DETERMINES THAT IT ACQUIRED JURISDICTION TO APPOINT A GUARDIAN OF THE PERSON OR ISSUE A PROTECTIVE ORDER BECAUSE A PARTY SEEKING TO INVOKE ITS JURISDICTION ENGAGED IN UNJUSTIFIABLE CONDUCT, IT MAY ASSESS AGAINST THAT PARTY NECESSARY AND REASONABLE EXPENSES, INCLUDING ATTORNEY'S FEES, INVESTIGATIVE FEES, COURT COSTS, COMMUNICATION EXPENSES, WITNESS FEES AND EXPENSES, AND TRAVEL EXPENSES. THE COURT MAY NOT ASSESS FEES, COSTS OR EXPENSES OF ANY KIND AGAINST THIS STATE OR A GOVERNMENTAL SUBDIVISION, AGENCY OR INSTRUMENTALITY OF THIS STATE UNLESS AUTHORIZED BY LAW OTHER THAN THIS ARTICLE.

S 83.27 NOTICE OF PROCEEDING.

IF A PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON OR ISSUANCE OF A PROTECTIVE ORDER IS BROUGHT IN THIS STATE AND THIS STATE WAS NOT THE RESPONDENT'S HOME STATE ON THE DATE THE PETITION WAS FILED, IN ADDITION TO COMPLYING WITH THE NOTICE REQUIREMENTS OF THIS STATE, NOTICE OF THE PETITION MUST BE GIVEN TO THOSE PERSONS WHO WOULD BE ENTITLED TO NOTICE OF THE PETITION IF A PROCEEDING WERE BROUGHT IN THE RESPONDENT'S HOME STATE. THE NOTICE MUST BE GIVEN IN THE SAME MANNER AS NOTICE IS REQUIRED TO BE GIVEN IN THIS STATE.

S 83.29 PROCEEDINGS IN MORE THAN ONE STATE.

EXCEPT FOR A PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON IN AN EMERGENCY OR ISSUANCE OF A PROTECTIVE ORDER LIMITED TO PROPERTY LOCATED IN THIS STATE UNDER PARAGRAPH ONE OR TWO OF SUBDIVISION (A) OF SECTION 83.19 OF THIS ARTICLE, IF A PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON OR ISSUANCE OF A PROTECTIVE ORDER IS FILED IN THIS STATE AND IN ANOTHER STATE AND NEITHER PETITION HAS BEEN DISMISSED OR WITHDRAWN, THE FOLLOWING RULES APPLY:

(A) IF THE COURT IN THIS STATE HAS JURISDICTION UNDER SECTION 83.17 OF THIS ARTICLE, IT MAY PROCEED WITH THE CASE UNLESS A COURT IN ANOTHER STATE ACQUIRES JURISDICTION UNDER PROVISIONS SIMILAR TO SUCH SECTION BEFORE THE APPOINTMENT OR ISSUANCE OF THE ORDER.

(B) IF THE COURT IN THIS STATE DOES NOT HAVE JURISDICTION UNDER SECTION 83.17 OF THIS ARTICLE, WHETHER AT THE TIME THE PETITION IS FILED OR AT ANY TIME BEFORE THE APPOINTMENT OR ISSUANCE OF THE ORDER, THE COURT SHALL STAY THE PROCEEDING AND COMMUNICATE WITH THE COURT IN THE

OTHER STATE. IF THE COURT IN THE OTHER STATE HAS JURISDICTION, THE COURT IN THIS STATE SHALL DISMISS THE PETITION UNLESS THE COURT IN THE OTHER STATE DETERMINES THAT THE COURT IN THIS STATE IS A MORE APPROPRIATE FORUM.

S 83.31 TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE.

(A) A GUARDIAN OF THE PERSON OR A GUARDIAN OF THE PROPERTY APPOINTED IN THIS STATE MAY PETITION THE COURT TO TRANSFER THE GUARDIANSHIP TO ANOTHER STATE.

(B) NOTICE OF A PETITION UNDER SUBDIVISION (A) OF THIS SECTION MUST BE GIVEN TO THE PERSONS THAT WOULD BE ENTITLED TO NOTICE OF A PETITION IN THIS STATE FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON OR A GUARDIAN OF THE PROPERTY.

(C) ON THE COURT'S OWN MOTION OR ON REQUEST OF THE GUARDIAN OF THE PERSON, THE GUARDIAN OF THE PROPERTY, THE PERSON SUBJECT TO THE GUARDIANSHIP OF THE PERSON, OR THE PROTECTED PERSON, OR OTHER PERSON REQUIRED TO BE NOTIFIED OF THE PETITION, THE COURT SHALL HOLD A HEARING ON A PETITION FILED PURSUANT TO SUBDIVISION (A) OF THIS SECTION.

(D) THE COURT SHALL ISSUE AN ORDER PROVISIONALLY GRANTING A PETITION TO TRANSFER A GUARDIANSHIP OF THE PERSON AND SHALL DIRECT THE GUARDIAN OF THE PERSON TO PETITION FOR GUARDIANSHIP OF THE PERSON IN THE OTHER STATE IF THE COURT IS SATISFIED THAT THE GUARDIANSHIP OF THE PERSON WILL BE ACCEPTED BY THE COURT IN THE OTHER STATE AND THE COURT FINDS THAT:

1. THE PERSON SUBJECT TO THE GUARDIANSHIP OF THE PERSON IS PHYSICALLY PRESENT IN OR IS REASONABLY EXPECTED TO MOVE PERMANENTLY TO THE OTHER STATE;

2. AN OBJECTION TO THE TRANSFER HAS NOT BEEN MADE OR, IF AN OBJECTION HAS BEEN MADE, THE OBJECTOR HAS NOT ESTABLISHED THAT THE TRANSFER WOULD BE CONTRARY TO THE INTERESTS OF THE PERSON SUBJECT TO THE GUARDIANSHIP OF THE PERSON; AND

3. PLANS FOR CARE AND SERVICES FOR THE PERSON SUBJECT TO THE GUARDIANSHIP OF THE PERSON IN THE OTHER STATE ARE REASONABLE AND SUFFICIENT.

(E) THE COURT SHALL ISSUE A PROVISIONAL ORDER GRANTING A PETITION TO TRANSFER A GUARDIANSHIP OF THE PROPERTY AND SHALL DIRECT THE GUARDIAN OF THE PROPERTY TO PETITION FOR GUARDIANSHIP OF THE PROPERTY IN THE OTHER STATE IF THE COURT IS SATISFIED THAT THE GUARDIANSHIP OF THE PROPERTY WILL BE ACCEPTED BY THE COURT OF THE OTHER STATE AND THE COURT FINDS THAT:

1. THE PROTECTED PERSON IS PHYSICALLY PRESENT IN OR IS REASONABLY EXPECTED TO MOVE PERMANENTLY TO THE OTHER STATE, OR THE PROTECTED PERSON HAS A SIGNIFICANT CONNECTION TO THE OTHER STATE CONSIDERING THE FACTORS IN SECTION 83.13 OF THIS ARTICLE;

2. AN OBJECTION TO THE TRANSFER HAS NOT BEEN MADE OR, IF AN OBJECTION HAS BEEN MADE, THE OBJECTOR HAS NOT ESTABLISHED THAT THE TRANSFER WOULD BE CONTRARY TO THE INTERESTS OF THE PROTECTED PERSON; AND

3. ADEQUATE ARRANGEMENTS WILL BE MADE FOR MANAGEMENT OF THE PROTECTED PERSON'S PROPERTY.

(F) THE COURT SHALL ISSUE A FINAL ORDER CONFIRMING THE TRANSFER AND TERMINATING THE GUARDIANSHIP OF THE PERSON OR PROPERTY UPON ITS RECEIPT OF:

1. A PROVISIONAL ORDER ACCEPTING THE PROCEEDING FROM THE COURT TO WHICH THE PROCEEDING IS TO BE TRANSFERRED WHICH IS ISSUED UNDER PROVISIONS SIMILAR TO SECTION 83.33 OF THIS ARTICLE; AND

2. THE DOCUMENTS REQUIRED TO TERMINATE A GUARDIANSHIP OF THE PERSON OR PROPERTY IN THIS STATE.

S 83.33 ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE.

(A) TO CONFIRM TRANSFER OF A GUARDIANSHIP OF THE PERSON OR GUARDIANSHIP OF THE PROPERTY TRANSFERRED TO THIS STATE UNDER PROVISIONS SIMILAR TO SECTION 83.31 OF THIS ARTICLE, THE GUARDIAN OF THE PERSON OR GUARDIAN OF THE PROPERTY MUST PETITION THE COURT IN THIS STATE PURSUANT TO ARTICLE EIGHTY-ONE OF THIS TITLE OR ARTICLE SEVENTEEN-A OF THE SURROGATE'S COURT PROCEDURE ACT TO ACCEPT THE GUARDIANSHIP OF THE PERSON OR GUARDIANSHIP OF THE PROPERTY. THE PETITION MUST INCLUDE A CERTIFIED COPY OF THE OTHER STATE'S PROVISIONAL ORDER OF TRANSFER.

(B) NOTICE OF A PETITION UNDER SUBDIVISION (A) OF THIS SECTION MUST BE GIVEN TO THOSE PERSONS THAT WOULD BE ENTITLED TO NOTICE IF THE PETITION WERE A PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON OR ISSUANCE OF A PROTECTIVE ORDER IN BOTH THE TRANSFERRING STATE AND THIS STATE. THE NOTICE MUST BE GIVEN IN THE SAME MANNER AS NOTICE IS REQUIRED TO BE GIVEN IN THIS STATE.

(C) ON THE COURT'S OWN MOTION OR ON REQUEST OF THE GUARDIAN OF THE PERSON OR GUARDIAN OF THE PROPERTY, THE PERSON SUBJECT TO THE GUARDIANSHIP OF THE PERSON OR PROTECTED PERSON, OR OTHER PERSON REQUIRED TO BE NOTIFIED OF THE PROCEEDING, THE COURT SHALL HOLD A HEARING ON A PETITION FILED PURSUANT TO SUBDIVISION (A) OF THIS SECTION.

(D) THE COURT SHALL ISSUE AN ORDER PROVISIONALLY GRANTING A PETITION FILED UNDER SUBDIVISION (A) OF THIS SECTION UNLESS:

1. AN OBJECTION IS MADE AND THE OBJECTOR ESTABLISHES THAT TRANSFER OF THE PROCEEDING WOULD BE CONTRARY TO THE INTERESTS OF THE INCAPACITATED OR PROTECTED PERSON; OR

2. THE GUARDIAN OF THE PERSON OR GUARDIAN OF THE PROPERTY IS INELIGIBLE FOR APPOINTMENT IN THIS STATE.

(E) THE COURT SHALL ISSUE A FINAL ORDER ACCEPTING THE PROCEEDING AND APPOINTING THE GUARDIAN OF THE PERSON OR GUARDIAN OF THE PROPERTY AS GUARDIAN OF THE PERSON OR GUARDIAN OF THE PROPERTY IN THIS STATE UPON ITS RECEIPT FROM THE COURT FROM WHICH THE PROCEEDING IS BEING TRANSFERRED OF A FINAL ORDER ISSUED UNDER PROVISIONS SIMILAR TO SECTION 83.31 OF THIS ARTICLE TRANSFERRING THE PROCEEDING TO THIS STATE.

(F) NOT LATER THAN NINETY DAYS AFTER ISSUANCE OF A FINAL ORDER ACCEPTING TRANSFER OF A GUARDIANSHIP OF THE PERSON OR GUARDIANSHIP OF THE PROPERTY, THE COURT SHALL DETERMINE WHETHER THE GUARDIANSHIP OF THE PERSON OR GUARDIANSHIP OF THE PROPERTY NEEDS TO BE MODIFIED TO CONFORM TO THE LAW OF THIS STATE.

(G) IN GRANTING A PETITION UNDER THIS SECTION, THE COURT SHALL RECOGNIZE A GUARDIANSHIP ORDER FROM THE OTHER STATE, INCLUDING THE DETERMINATION OF INCAPACITY AND THE APPOINTMENT OF THE GUARDIAN OF THE PERSON OR GUARDIAN OF THE PROPERTY.

(H) THE DENIAL BY A COURT OF THIS STATE OF A PETITION TO ACCEPT A GUARDIANSHIP OF THE PERSON OR GUARDIANSHIP OF THE PROPERTY TRANSFERRED FROM ANOTHER STATE DOES NOT AFFECT THE ABILITY OF THE GUARDIAN OF THE PERSON OR GUARDIAN OF THE PROPERTY TO SEEK APPOINTMENT AS GUARDIAN OF THE PERSON OR GUARDIAN OF THE PROPERTY IN THIS STATE UNDER ARTICLE EIGHTY-ONE OF THIS TITLE OR ARTICLE SEVENTEEN-A OF THE SURROGATE'S COURT PROCEDURE ACT IF THE COURT HAS JURISDICTION TO MAKE AN APPOINTMENT OTHER THAN BY REASON OF THE PROVISIONAL ORDER OF TRANSFER.

S 83.35 REGISTRATION OF ORDERS APPOINTING A GUARDIAN OF THE PERSON.

IF A GUARDIAN OF THE PERSON BY WHATEVER NAME DESIGNATED HAS BEEN APPOINTED IN ANOTHER STATE AND A PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON IS NOT PENDING IN THIS STATE, THE GUARDIAN OF THE PERSON APPOINTED IN THE OTHER STATE, AFTER GIVING NOTICE TO THE APPOINTING COURT OF AN INTENT TO REGISTER, MAY REGISTER THE GUARDIANSHIP OF THE PERSON ORDER IN THIS STATE BY FILING AS A FOREIGN JUDGMENT IN A COURT,

IN ANY APPROPRIATE COUNTY OF THIS STATE, CERTIFIED COPIES OF THE ORDER AND LETTERS OF OFFICE.

S 83.37 REGISTRATION OF PROTECTIVE ORDERS.

IF A GUARDIAN OF THE PROPERTY HAS BEEN APPOINTED IN ANOTHER STATE AND A PETITION FOR A PROTECTIVE ORDER IS NOT PENDING IN THIS STATE, THE GUARDIAN OF THE PROPERTY APPOINTED IN THE OTHER STATE, AFTER GIVING NOTICE TO THE APPOINTING COURT OF AN INTENT TO REGISTER, MAY REGISTER THE PROTECTIVE ORDER IN THIS STATE BY FILING AS A FOREIGN JUDGMENT IN A COURT OF THIS STATE, IN ANY COUNTY IN WHICH PROPERTY BELONGING TO THE PROTECTED PERSON IS LOCATED, CERTIFIED COPIES OF THE ORDER AND LETTERS OF OFFICE AND OF ANY BOND. THEREAFTER, SAID GUARDIAN OF THE PROPERTY SHALL COMPLY WITH THE REQUIREMENTS OF SUBPARAGRAPH (VI) OF PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION 81.20 OF THIS TITLE WITH REGARD TO ANY REAL PROPERTY OF THE PROTECTED PERSON IN THIS STATE.

S 83.39 EFFECT OF REGISTRATION.

(A) UPON REGISTRATION OF AN ORDER APPOINTING A GUARDIAN OF THE PERSON OR PROTECTIVE ORDER FROM ANOTHER STATE, THE GUARDIAN OF THE PERSON OR GUARDIAN OF THE PROPERTY MAY EXERCISE IN THIS STATE ALL POWERS AUTHORIZED IN THE ORDER OF APPOINTMENT EXCEPT AS PROHIBITED UNDER THE LAWS OF THIS STATE, INCLUDING MAINTAINING ACTIONS AND PROCEEDINGS IN THIS STATE AND SELLING REAL PROPERTY AND, IF THE GUARDIAN OF THE PERSON OR GUARDIAN OF THE PROPERTY IS NOT A RESIDENT OF THIS STATE, SUBJECT TO ANY CONDITIONS IMPOSED UPON NONRESIDENT PARTIES.

(B) A COURT OF THIS STATE MAY GRANT ANY RELIEF AVAILABLE UNDER THIS ARTICLE AND OTHER LAW OF THIS STATE TO ENFORCE A REGISTERED ORDER.

S 83.41 UNIFORMITY OF APPLICATION AND CONSTRUCTION.

IN APPLYING AND CONSTRUING THIS ARTICLE, CONSIDERATION MUST BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

S 83.43 RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

THIS ARTICLE MODIFIES, LIMITS AND SUPERSEDES THE FEDERAL ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 U.S.C. SECTION 7001, ET SEQ., BUT DOES NOT MODIFY, LIMIT OR SUPERSEDE SECTION 101(C) OF SUCH ACT, 15 U.S.C. SECTION 7001 (C), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION 103(B) OF SUCH ACT, 15 U.S.C. SECTION 7003(B).

S 83.45 TRANSITIONAL PROVISION.

(A) THIS ARTICLE APPLIES TO PROCEEDINGS BEGUN ON OR AFTER THIS ARTICLE'S EFFECTIVE DATE.

(B) SECTIONS 83.01 THROUGH 83.05 AND SECTIONS 83.31 THROUGH 83.43 OF THIS ARTICLE APPLY TO PROCEEDINGS BEGUN BEFORE THIS ARTICLE'S EFFECTIVE DATE, REGARDLESS OF WHETHER A GUARDIANSHIP OR PROTECTIVE ORDER HAS BEEN ISSUED.

S 2. Sections 1758 of the surrogate's court procedure act, as added by chapter 675 of the laws of 1989, is amended to read as follows:

S 1758. Court jurisdiction

1. THE JURISDICTION OF THE COURT TO HEAR PROCEEDINGS PURSUANT TO THIS ARTICLE SHALL BE SUBJECT TO ARTICLE EIGHTY-THREE OF THE MENTAL HYGIENE LAW.

2. After the appointment of a guardian, standby guardian or alternate guardians, the court shall have and retain general jurisdiction over the mentally retarded or developmentally disabled person for whom such guardian shall have been appointed, to take of its own motion or to entertain and adjudicate such steps and proceedings relating to such guardian, standby, or alternate guardianship as may be deemed necessary or

proper for the welfare of such mentally retarded or developmentally disabled person.

S 3. Section 81.18 of the mental hygiene law, as amended by chapter 438 of the laws of 2004, is amended to read as follows:

S 81.18 Foreign guardian for a person not present in the state.

Where the person alleged to be incapacitated is not present in the state and a guardian, by whatever name designated, has been duly appointed pursuant to the laws of any other [state, territory, or] country where the person alleged to be incapacitated resides to assist such person in property management, the court in its discretion, may make an order appointing the foreign guardian as a guardian under this article with powers with respect to property management within this state on the foreign guardian's giving such security as the court deems proper. IN ITS DISCRETION, THE COURT MAY UTILIZE THE PROVISIONS OF ARTICLE EIGHTY-THREE OF THIS TITLE.

S 4. This act shall take effect immediately.