

CHAPTER 79
SB 209-FN - FINAL VERSION

03/05/2015 0500s

2015 SESSION

15-0205
05/04

SENATE BILL **209-FN**

AN ACT adopting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

SPONSORS: Sen. Stiles, Dist 24; Sen. Reagan, Dist 17; Sen. Lasky, Dist 13; Sen. Carson, Dist 14; Sen. Soucy, Dist 18; Sen. Feltes, Dist 15; Rep. Rowe, Hills 22; Rep. Sherman, Rock 24; Rep. P. Long, Hills 10; Rep. McMahon, Rock 7; Rep. Wall, Straf 6

COMMITTEE: Judiciary

ANALYSIS

This bill adopts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, promulgated by the Uniform Law Commission.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT adopting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 79:1 New Chapter; Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.
2 Amend RSA by inserting after chapter 464-B the following new chapter:

CHAPTER 464-C

UNIFORM ADULT GUARDIANSHIP AND
PROTECTIVE PROCEEDINGS JURISDICTION ACT

Article 1 General Provisions

7 464-C:1 Short Title. This chapter may be cited as the Uniform Adult Guardianship and
8 Protective Proceedings Jurisdiction Act (2007).

9 464-C:2 Definitions. In this chapter:

10 I. "Adult" means an individual who has attained 18 years of age.

11 II. "Conservator" means a person appointed by the court to administer the property of an
12 adult, including a person appointed under RSA 464-A, and a guardian of the estate as defined in
13 RSA 464-A.

14 III. "Court" means circuit court probate division.

15 IV. "Guardian" means a person appointed by the court to make decisions regarding the
16 person of an adult, including a person appointed under RSA 464-A, and a guardian of the person as
17 defined in RSA 464-A.

18 V. "Guardianship order" means an order appointing a guardian.

19 VI. "Guardianship proceeding" means a judicial proceeding in which an order for the
20 appointment of a guardian is sought or has been issued.

21 VII. "Incapacitated person" means an adult for whom a guardian has been appointed.

22 VIII. "Party" means the respondent, petitioner, guardian, conservator, or any other person
23 allowed by the court to participate in a guardianship or protective proceeding.

24 IX. "Person," except in the term incapacitated person or protected person, means an
25 individual, corporation, business trust, estate, trust, partnership, limited liability company,
26 association, joint venture, public corporation, government or governmental subdivision, agency, or
27 instrumentality, or any other legal or commercial entity.

28 X. "Protected person" means an adult for whom a protective order has been issued.

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1 XI. “Protective order” means an order appointing a conservator or other order related to
2 management of an adult’s property.

3 XII. “Protective proceeding” means a judicial proceeding in which a protective order is
4 sought or has been issued.

5 XIII. “Record” means information that is inscribed on a tangible medium or that is stored in
6 an electronic or other medium and is retrievable in perceivable form.

7 XIV. “Respondent” means an adult for whom a protective order or the appointment of a
8 guardian is sought.

9 XV. “State” means a state of the United States, the District of Columbia, Puerto Rico, the
10 United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular
11 possession subject to the jurisdiction of the United States.

12 464-C:3 International Application of Chapter. A court of this state may treat a foreign country
13 as if it were a state for the purpose of applying this article and articles 2, 3, and 5.

14 464-C:4 Communication Between Courts.

15 I. A court of this state may communicate with a court in another state concerning a
16 proceeding arising under this chapter. The court may allow the parties to participate in the
17 communication. Except as otherwise provided in paragraph II, the court shall make a record of the
18 communication. The record may be limited to the fact that the communication occurred.

19 II. Courts may communicate concerning schedules, calendars, court records, and other
20 administrative matters without making a record.

21 464-C:5 Cooperation Between Courts.

22 I. In a guardianship or protective proceeding in this state, a court of this state may request
23 the appropriate court of another state to do any of the following:

24 (a) Hold an evidentiary hearing.

25 (b) Order a person in that state to produce evidence or give testimony pursuant to
26 procedures of that state.

27 (c) Order that an evaluation or assessment be made of the respondent.

28 (d) Order any appropriate investigation of a person involved in a proceeding.

29 (e) Forward to the court of this state a certified copy of the transcript or other record of a
30 hearing under subparagraph (a) or any other proceeding, any evidence otherwise produced under
31 subparagraph (b), and any evaluation or assessment prepared in compliance with an order under
32 subparagraph (c) or (d).

33 (f) Issue any order necessary to assure the appearance in the proceeding of a person
34 whose presence is necessary for the court to make a determination, including the respondent or the
35 incapacitated or protected person.

36 (g) Issue an order authorizing the release of medical, financial, criminal, or other relevant

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1 information in that state, including protected health information as defined in 45 C.F.R. section 160.103,
2 as amended.

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

6 464-C:6 Taking Testimony in Another State.

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

12 II. In a guardianship or protective proceeding, a court in this state may permit a witness
13 located in another state to be deposed or to testify by telephone or audiovisual or other electronic
14 means. A court of this state shall cooperate with the court of the other state in designating an
15 appropriate location for the deposition or testimony.

16 III. Documentary evidence transmitted from another state to a court of this state by
17 technological means that do not produce an original writing may not be excluded from evidence on an
18 objection based on the best evidence rule.

19 Article 2 Jurisdiction

20 464-C:7 Definitions; Significant Connection Factors.

21 I. In this chapter:

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

25 (b) “Home state” means the state in which the respondent was physically present,
26 including any period of temporary absence, for at least 6 consecutive months immediately before the
27 filing of a petition for a protective order or the appointment of a guardian; or if none, the state in
28 which the respondent was physically present, including any period of temporary absence, for at least
29 6 consecutive months ending within the 6 months prior to the filing of the petition.

30 (c) “Significant-connection state” means a state, other than the home state, with which a
31 respondent has a significant connection other than mere physical presence and in which substantial
32 evidence concerning the respondent is available.

33 II. In determining under RSA 464-C:7 and RSA 464-C:16, V whether a respondent has a
34 significant connection with a particular state, the court shall consider:

35 (a) The location of the respondent’s family and other persons required to be notified of
36 the guardianship or protective proceeding;

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1 (b) The length of time the respondent at any time was physically present in the state and
2 the duration of any absence;

3 (c) The location of the respondent's property; and

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

7 464-C:8 Exclusive Basis. This chapter provides the exclusive jurisdictional basis for a court to
8 address and adjudicate a case falling within the provisions of this chapter.

9 464-C:9 Jurisdiction. A court of this state has jurisdiction to appoint a guardian or issue a
10 protective order for a respondent if:

11 I. This state is the respondent's home state.

12 II. On the date the petition is filed, this state is a significant-connection state and:

13 (a) The respondent does not have a home state or a court of the respondent's home state
14 has declined to exercise jurisdiction because this state is a more appropriate forum; or

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

18 (1) A petition for an appointment or order is not filed in the respondent's home state;

19 (2) An objection to the court's jurisdiction is not filed by a person required to be
20 notified of the proceeding; and

21 (3) The court in this state concludes that it is an appropriate forum under the factors
22 set forth in RSA 464-C:12;

23 III. This state does not have jurisdiction under either paragraph I or II, the respondent's
24 home state and all significant-connection states have declined to exercise jurisdiction because this
25 state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions
26 of this state and the United States; or

27 IV. The requirements for special jurisdiction under RSA 464-C:10 are met.

28 464-C:10 Special Jurisdiction.

29 I. A court of this state lacking jurisdiction under RSA 464-C:9, I-III has special jurisdiction
30 to do any of the following:

31 (a) Appoint a guardian in an emergency for a term not exceeding 90 days for a
32 respondent who is physically present in this state.

33 (b) Issue a protective order with respect to real or tangible personal property located in
34 this state.

35 (c) Appoint a guardian or conservator for an incapacitated or protected person for whom
36 a provisional order to transfer the proceeding from another state has been issued under procedures

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1 similar to RSA 464-C:16.

2 II. If a petition for the appointment of a guardian in an emergency is brought in this state
3 and this state was not the respondent's home state on the date the petition was filed, the court shall
4 dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is
5 requested before or after the emergency appointment.

6 464-C:11 Exclusive and Continuing Jurisdiction. Except as otherwise provided in RSA 464-C:10,
7 a court that has appointed a guardian or issued a protective order consistent with this chapter has
8 exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the
9 appointment or order expires by its own terms.

10 464-C:12 Appropriate Forum.

11 I. A court of this state having jurisdiction under RSA 464-C:9 to appoint a guardian or issue
12 a protective order may decline to exercise its jurisdiction if it determines at any time that a court of
13 another state is a more appropriate forum.

14 II. If a court of this state declines to exercise its jurisdiction under paragraph I, it shall
15 either dismiss or stay the proceeding. The court may impose any condition the court considers just
16 and proper, including the condition that a petition for the appointment of a guardian or issuance of a
17 protective order be filed promptly in another state.

18 III. In determining whether it is an appropriate forum, the court shall consider all relevant
19 factors, including:

- 20 (a) Any expressed preference of the respondent;
- 21 (b) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to
22 occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
- 23 (c) The length of time the respondent was physically present in or was a legal resident of
24 this or another state;
- 25 (d) The distance of the respondent from the court in each state;
- 26 (e) The financial circumstances of the respondent's estate;
- 27 (f) The nature and location of the evidence;
- 28 (g) The ability of the court in each state to decide the issue expeditiously and the
29 procedures necessary to present evidence;
- 30 (h) The familiarity of the court of each state with the facts and issues in the proceeding; and
- 31 (i) If an appointment was made, the court's ability to monitor the conduct of the
32 guardian or conservator.

33 464-C:13 Jurisdiction Declined by Reason of Conduct.

34 I. If at any time a court of this state determines that it acquired jurisdiction to appoint a
35 guardian or issue a protective order because of unjustifiable conduct, the court may:

- 36 (a) Decline to exercise jurisdiction;

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

6 (c) Continue to exercise jurisdiction after considering:

7 (1) The extent to which the respondent and all persons required to be notified of the
8 proceedings have acquiesced in the exercise of the court's jurisdiction;

9 (2) Whether it is a more appropriate forum than the court of any other state under
10 the factors set forth in RSA 464-C:12, III; and

11 (3) Whether the court of any other state would have jurisdiction under factual
12 circumstances in substantial conformity with the jurisdictional standards of RSA 464-C:9.

13 II. If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a
14 protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may
15 assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees,
16 court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not
17 assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or
18 instrumentality of this state unless authorized by law other than this chapter.

19 464-C:14 Notice of Proceeding. If a petition for the appointment of a guardian or issuance of a
20 protective order is brought in this state and this state was not the respondent's home state on the
21 date the petition was filed, in addition to complying with the notice requirements of this state, notice
22 of the petition shall be given to those persons who would be entitled to notice of the petition if a
23 proceeding were brought in the respondent's home state. The notice shall be given in the same
24 manner as notice is required to be given in this state.

25 464-C:15 Proceedings in More Than One State. Except for a petition for the appointment of a
26 guardian in an emergency or issuance of a protective order limited to property located in this state
27 under RSA 464-C:10, I(a) or (b), if a petition for the appointment of a guardian or issuance of a
28 protective order is filed in this state and in another state and neither petition has been dismissed or
29 withdrawn, the following rules apply:

30 I. If the court in this state has jurisdiction under RSA 464-C:9, it may proceed with the case
31 unless a court in another state acquires jurisdiction under provisions similar to RSA 464-C:9 before
32 the appointment or issuance of the order.

33 II. If the court in this state does not have jurisdiction under RSA 464-C:9, whether at the
34 time the petition is filed or at any time before the appointment or issuance of the order, the court
35 shall stay the proceeding and communicate with the court in the other state. If the court in the other
36 state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other
37 state determines that the court in this state is a more appropriate forum.

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Article 3 Transfer of Guardianship or Conservatorship

464-C:16 Transfer of Guardianship or Conservatorship to Another State.

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

II. Notice of a petition under paragraph I shall be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

III. On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to paragraph I.

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

(a) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(b) 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 incapacitated person; and

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

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

(a) 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 RSA 464-C:7, II;

(b) 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

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

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

(a) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to RSA 464-C:17; and

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

464-C:17 Accepting Guardianship or Conservatorship Transferred From Another State.

I. To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to RSA 464-C:16, the guardian or conservator shall petition the court in this state

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1 to accept the guardianship or conservatorship. The petition shall include a certified copy of the other
2 state's provisional order of transfer.

3 II. Notice of a petition under paragraph I shall be given to those persons that would be
4 entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a
5 protective order in both the transferring state and this state. The notice shall be given in the same
6 manner as notice is required to be given in this state.

7 III. On the court's own motion or on request of the guardian or conservator, the
8 incapacitated or protected person, or other person required to be notified of the proceeding, the court
9 shall hold a hearing on a petition filed pursuant to paragraph I.

10 IV. The court shall issue an order provisionally granting a petition filed under paragraph I
11 unless:

12 (a) An objection is made and the objector establishes that transfer of the proceeding
13 would be contrary to the interests of the incapacitated or protected person; or

14 (b) The guardian or conservator is ineligible for appointment in this state.

15 V. The court shall issue a final order accepting the proceeding and appointing the guardian
16 or conservator as guardian or conservator in this state upon its receipt from the court from which the
17 proceeding is being transferred of a final order issued under provisions similar to RSA 464-C:16
18 transferring the proceeding to this state.

19 VI. In issuing a final order under RSA 464-C:17, V, the court shall recognize a guardianship
20 or conservatorship order from the other state, including the determination of the incapacitated or
21 protected person's incapacity and the appointment of the guardian or conservator.

22 VII. Not later than 90 days after issuance of a final order accepting transfer of a
23 guardianship or conservatorship, the court shall determine whether the guardianship or
24 conservatorship needs to be modified to conform to the law of this state and enter orders in
25 accordance therewith.

26 VIII. The denial by a court of this state of a petition to accept a guardianship or conservatorship
27 transferred from another state does not affect the ability of the guardian or conservator to seek
28 appointment as guardian or conservator in this state under RSA 464-A if the court has jurisdiction to
29 make an appointment other than by reason of the provisional order of transfer.

Article 4 Registration and Recognition of Orders From Other States

30
31 464-C:18 Registration of Guardianship Orders. If a guardian has been appointed in another
32 state and a petition for the appointment of a guardian is not pending in this state, the guardian
33 appointed in the other state, after giving notice to the appointing court of an intent to register, may
34 register the guardianship order in this state by filing as a foreign judgment in a court, in any
35 appropriate county of this state, certified copies of the order and letters of office.

36 464-C:19 Registration of Protective Orders. If a conservator has been appointed in another state

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1 and a petition for a protective order is not pending in this state, the conservator appointed in the
2 other state, after giving notice to the appointing court of an intent to register, may register the
3 protective order in this state by filing as a foreign judgment in a court of this state, in any county in
4 which property belonging to the protected person is located, certified copies of the order and letters of
5 office and of any bond.

6 464-C:20 Effect of Registration.

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

12 II. Upon registration of a protective order from another state, the court may require the
13 conservator to post an adequate surety bond to insure the faithful performance of his or her duties.
14 The conservator shall account to the court for the proceeds from the sale of any of the protected
15 person's estate situated in this state. A certified copy of the approved account shall be filed with the
16 court in this state prior to discharge of the conservator unless the court of this state authorizes the
17 filing of an affidavit, in lieu of the account, stating that the assets of the protected person situated in
18 this state have been transferred to the estate of the protected person pending in the court of the
19 other state.

20 III. A court of this state may grant any relief available under this chapter and other law of
21 this state to enforce a registered order.

22 Article 5 Miscellaneous Provisions

23 464-C:21 Uniformity of Application and Construction. In applying and construing this uniform
24 act, consideration shall be given to the need to promote uniformity of the law with respect to its
25 subject matter among states that enact it.

26 464-C:22 Relation to Electronic Signatures in Global and National Commerce Act. This chapter
27 modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce
28 Act, 15 U.S.C. section 7001, et seq., but does not modify, limit, or supersede section 101(c) of that Act,
29 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section
30 103(b) of that act, 15 U.S.C. section 7003(b).

31 464-C:23 Transitional Provisions.

32 I. This chapter applies to guardianship and protective proceedings begun on or after January
33 1, 2016.

34 II. Articles 1, 3, and 4 and RSA 464-C:21 and RSA 464-C:22 apply to proceedings begun
35 before January 1, 2016, regardless of whether a guardianship or protective order has been issued.

36 79:2 Repeal. The following are repealed:

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1 I. RSA 464-A:44, relative to temporary recognition of foreign guardianships and
2 conservatorships.

3 II. RSA 464-A:45, relative to transfer of guardianships from foreign jurisdictions.

4 III. RSA 464-A:46, relative to transfer of guardianships to foreign jurisdictions.

5 79:3 Effective Date. This act shall take effect January 1, 2016.

6

7 Approved: June 2, 2015

8 Effective Date: January 1, 2016