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BILL ANALYSIS



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Senate Bills 465 and 466 (as introduced 9-10-13)
Sponsor: Senator Tonya Schuitmaker
Committee: Judiciary

Date Completed: 9-23-14

CONTENT

Senate Bill 466 would enact the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act" to do the following:

- Provide for a Michigan court to communicate with a court of another state concerning a petition for a guardianship or conservatorship for an adult.
- Establish criteria to determine whether a Michigan court or a court of another state had jurisdiction.
- Establish special jurisdiction, under certain circumstances, for a Michigan court that lacked jurisdiction under the Act.
- Allow a Michigan court to decline to exercise jurisdiction if the court of another state were a more appropriate forum.
- Establish criteria for a court to consider in determining whether it was an appropriate forum.
- Specify actions that a Michigan court could take if it determined that it had acquired jurisdiction because of unjustifiable conduct.
- Provide for the transfer of a guardianship or conservatorship between states.
- Provide for the construction of the Act.

Senate Bill 465 would amend the Estates and Protected Individuals Code (EPIC) to limit the application of EPIC in cases covered by the proposed uniform Act.

The bills are tie-barred.

Senate Bill 466**Article 1 – General Provisions**

Under the proposed Act, a Michigan court could communicate with a court in another state concerning a proceeding arising under the Act. The court would have to make a record of the communication, and the record could be limited to the fact that the communication occurred. Courts, however, could communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

A Michigan court could treat a foreign country as if it were a state for the purpose of applying the Act.

In a guardianship or protective proceeding in this State, a Michigan court could request the appropriate court of another state to do any of the following:

- Hold an evidentiary hearing.
- Order a person in that other state to produce evidence or give testimony pursuant to Michigan procedures.
- Order an evaluation or assessment of the respondent.
- Order any appropriate investigation of a person involved in a proceeding.
- Forward to the Michigan court a certified copy of the transcript or other record of a hearing or other proceeding, any evidence produced, or any evaluation or assessment prepared.
- Issue an order necessary to assure the appearance in the proceeding of a person whose presence was necessary for the court to make a determination, including the respondent or the incapacitated or protected person.
- Issue an order authorizing the release in the other state of medical, financial, criminal, or other relevant information, including protected health information.

If a court of another state in which a guardianship or protective proceeding were pending requested assistance of the kind described above, a Michigan court would have jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with it.

Testimony of a witness located in another state could be offered by deposition or other means allowable in Michigan. A Michigan court could allow a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means.

Article 2 – Jurisdiction

A Michigan court would have jurisdiction to appoint a guardian or issue a protective order for a respondent if Michigan were the respondent's home state or, on the date the petition was filed, Michigan were a "significant-connection state" and either 1) the respondent did not have a home state or the court of his or her home state had declined to exercise jurisdiction because this State was a more appropriate forum or 2) the respondent had a home state, a petition for an appointment or order was not pending in court of that state or another significant-connection state, and, before the court made the appointment or issued the order, all of the following applied:

- A petition for an appointment or order was not filed in the respondent's home state.
- An objection to the court's jurisdiction was not filed by a person required to be notified of the proceeding.
- The Michigan court concluded that it was an appropriate forum under the proposed Act.

A Michigan court also would have jurisdiction to appoint a guardian or issue a protective order for a respondent if either of the following applied:

- Michigan did not have jurisdiction under the conditions described above, the respondent's home state and significant-connection states declined to exercise jurisdiction because Michigan was the more appropriate forum, and jurisdiction in Michigan was consistent with the State Constitution and U.S. Constitution.
- Requirements for special jurisdiction under the Act were met.

The Act would define "significant-connection state" as 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. "Home state" would mean 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; 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 before the filing of the petition.

A Michigan court lacking jurisdiction would have special jurisdiction to do any of the following:

- Appoint a guardian in an emergency for a term not to exceed 90 days for a respondent who was physically present in Michigan.
- Issue a protective order with respect to real or tangible personal property located in Michigan.
- Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state had been issued.

A Michigan court having jurisdiction under the Act to appoint a guardian or issue a protective order could decline to exercise its jurisdiction if it determined at any time that a court of another state was a more appropriate forum. The Michigan court would have to dismiss or stay the proceeding and could impose any condition it considered just and proper, including the condition that a petition for appointment of a guardian or issuance of a protective order be filed promptly in another state.

In determining whether it was an appropriate forum, a court would have to consider all relevant factors, including all of the following:

- Any expressed preference of the respondent.
- Whether abuse, neglect, or exploitation of the respondent had occurred or was likely to occur and which state could best protect him or her.
- The length of time the respondent was physically present in, or was a legal resident of, Michigan or another state.
- The distance of the respondent from the court in each state.
- The financial circumstances of the respondent's estate.
- The nature and location of the evidence.
- The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.
- The familiarity of the court of each state with the facts and issues in the proceeding.
- If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

If a Michigan court determined that it had acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court could decline to exercise jurisdiction; exercise jurisdiction for certain limited purposes, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order was filed in a court of another state having jurisdiction; or continue to exercise jurisdiction after considering all of the following:

- The extent to which the respondent and all people required to be notified of the proceedings had acquiesced in the court's exercise of jurisdiction.
- Whether it was a more appropriate forum than the court of any other state.
- Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of the Act.

If a Michigan court determined that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it could assess certain expenses against that party.

If a petition for the appointment of a guardian or issuance of a protective order were brought in this State and Michigan were not the respondent's home state on the date the

petition was filed, in addition to compliance with the State's notice requirements, notice of the petition would have to be given to those people who would be entitled to notice in the respondent's home state in the manner required in that state.

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in Michigan, if a petition were filed in this State and another state and neither petition had been dismissed or withdrawn, the following rules would apply: If the Michigan court had jurisdiction under the Act, it could proceed with the case unless a court in another state acquired jurisdiction under the Act before the appointment or issuance of the order. If the Michigan court did not have jurisdiction under the Act, whether at the time the petition was filed or at any time before the appointment or issuance of the order, the court would have to stay the proceeding and communicate with the other state's court. If the court in the other state had jurisdiction, the Michigan court would have to dismiss the petition unless the other state's court determined that the Michigan court was a more appropriate forum.

Article 3 – Transfer of Guardianship or Conservatorship

A guardian or conservator appointed in Michigan could petition the court to transfer the guardianship or conservatorship to another state. Notice of the petition would have to be given to the people who would be entitled to notice of a petition in Michigan for the appointment of a guardian or conservator. The court would have to hold a hearing on its 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 would have to issue an order provisionally granting a petition to transfer a guardianship, and direct the guardian to petition for guardianship in the other state, if the court were satisfied that the guardianship would be accepted by the other state's court and found that all of the following applied:

- The incapacitated person was physically present in or was reasonably expected to move permanently to the other state.
- An objection to the transfer had not been made or, if an objection had been made, the objector had not established that the transfer would be contrary to the incapacitated person's interests.
- Plans for care and services for the incapacitated person in the other state were reasonable and sufficient.

The court would have to issue a provisional order granting a petition to transfer a conservatorship, and direct the conservator to petition for conservatorship in the other state, if the court were satisfied that the conservatorship would be accepted by the other state's court and found that all of the following applied:

- The protected person was physically present in or was reasonably expected to move permanently to the other state, or had a significant connection to the other state.
- An objection to the transfer had not been made or, if an objection had been made, the objector had not established that the transfer would be contrary to the protected person's interests.
- Adequate arrangements would be made for management of the protected person's property.

The court would have to issue a final order confirming the transfer and terminating the guardianship or conservatorship upon receiving both a provisional order accepting the proceeding from the court to which it was to be transferred and the documents required to terminate a guardianship or conservatorship in Michigan.

To confirm transfer of a guardianship or conservatorship transferred to this State, the guardian or conservator would have to petition the Michigan court to accept the guardianship or conservatorship.

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, the court would have to hold a hearing on a transfer petition. The court would have to issue an order provisionally granting the petition unless either of the following applied:

- An objection was made and the objector established that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person.
- The guardian or conservator was ineligible for appointment in Michigan.

The court would have to issue a final order accepting the proceeding and appointing the guardian or conservator in this State upon receiving from the transferring court a final order transferring the proceeding to Michigan.

A Michigan Court's denial of a petition to accept a guardianship or conservatorship transferred from another state would not affect the ability of the guardian or conservator to seek appointment in Michigan under EPIC if the court had jurisdiction to make an appointment other than by reason of the transfer.

Article 4 – Miscellaneous Provisions

In the application and construction of the uniform Act, consideration would have to be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

The Act would apply to guardianship and protective proceedings begun on or after its effective date. Articles 1 and 3, and the provisions of Article 4 described above, would apply to proceedings begun before that date, regardless of whether a guardianship or protective order had been issued.

The Act would modify, limit, and supersede the Federal Electronic Signature in Global and National Commerce Act (15 USC 7001 to 7031) but would not modify, limit, or supersede Section 7001(c) of that Act or authorize electronic delivery of any of the notices described in Section 7003(b).

(Section 101(c) of the Federal Act relates to consumer disclosures and generally allows the use of an electronic record to provide or make available certain information that is required by law to be made available in writing. Section 103(b), however, provides that Section 101 allowing electronic delivery of records does not apply to court orders or notices, official court documents, or certain notices (such as the cancelation or termination of utility services or health insurance benefits, or the recall of a product that risks endangering health or safety).)

Senate Bill 465

The Estates and Protected Individuals Code specifies that it applies to the affairs and estates of a decedent, missing individual, or protected individual domiciled in Michigan. The bill would delete the reference to a protected individual. The Code also applies to an incapacitated individual or minor in Michigan. The bill would delete the reference to an incapacitated individual. Under the bill, EPIC would apply to an incapacitated individual or the affairs and estate of a protected individual if a Michigan court had jurisdiction under the proposed uniform Act.

Under EPIC, by accepting appointment, a guardian personally submits to the court's jurisdiction in a proceeding relating to the guardianship that may be instituted by an interested person. Under the bill, this would apply except as otherwise provided in the proposed Act.

Currently, after the service of notice in a proceeding seeking a conservator's appointment or other protective order and until the proceeding's termination, the court has the following jurisdiction:

- Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceeding is terminated.
- Exclusive jurisdiction to determine how the protected individual's estate that is subject to Michigan law is managed, spent, or distributed to or for the use of the protected individual or any of his or her dependents or other claimants.
- Concurrent jurisdiction to determine the validity of a claim against the protected individual or his or her estate, and questions of title concerning estate property.

Under the bill, that provision would apply except as otherwise provided in the proposed Act.

MCL 700.1301 et al. (S.B. 465)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 465

The bill would have no fiscal impact on State or local government.

Senate Bill 466

The bill would have no fiscal impact on State government. For local probate courts, there could be an increase in costs to facilitate communication with courts in other jurisdictions, align the proper jurisdictional authority, and coordinate guardians across states.

Fiscal Analyst: John Maxwell

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.