

State of Wisconsin



2017 Assembly Bill 629

Date of enactment: April 3, 2018
Date of publication*: April 4, 2018

2017 WISCONSIN ACT 187

AN ACT *to repeal* 54.34 (3) (a) to (j) and 54.38 (1m); *to renumber and amend* 54.34 (3) (intro.); *to amend* 54.30 (1), 54.34 (1) (intro.) and 54.44 (1) (c) 1.; and *to create* chapter 53 and 54.30 (4) of the statutes; **relating to:** uniform adult guardianship jurisdiction.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Chapter 53 of the statutes is created to read:

CHAPTER 53
UNIFORM ADULT GUARDIANSHIP
JURISDICTION
SUBCHAPTER I
GENERAL PROVISIONS

53.01 Purpose; construction. This chapter applies to the process of determining jurisdiction over the person for the purpose of a guardianship proceeding or matter. The chapter is intended to supplement but not replace the procedure for petitioning for a guardianship under ch. 54 and for protective placement or services under ch. 55. The purpose of this chapter is to resolve potential conflicts regarding jurisdiction between states and to make uniform the laws with respect to this chapter among those states. To the extent there is a conflict in procedure between this chapter and the provisions of ch. 54 or 55, the procedures in ch. 54 or 55 supersede the conflicting provision of this chapter.

53.02 Definitions. In this chapter:

- (1) "Abuse" has the meaning given in s. 46.90 (1) (a).
- (2) "Financial exploitation" has the meaning given in s. 46.90 (1) (ed).

(3) "Guardian of the estate" means a person appointed by the court of any state to administer the property of an adult on the basis of a finding of incapacity or incompetence or on the basis of being found to be a spendthrift, including a person appointed guardian of the estate under s. 54.10 (2) or (3) and including a conservator appointed in another state where that term is used for a role similar to that of a guardian of the estate under s. 54.10 (2) or (3). "Guardian of the estate" does not include a person appointed voluntary conservator under s. 54.76 (2).

(4) "Guardian of the person" means a person appointed by the court to make decisions regarding the person of an adult, including a guardian of the person appointed under s. 54.10 (3).

(5) "Guardianship of the person order" means an order appointing a guardian of the person.

(6) "Guardianship of the person proceeding" means a judicial proceeding in which an order for the appointment of a guardian of the person is sought or has been issued.

(7) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months immediately before the filing of a petition for an order appointing a guardian of the estate or the appointment of

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

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 6 consecutive months ending within the 6 months prior to the filing of the petition.

(8) “Incapacity” has the meaning given in s. 54.01 (15).

(9) “Neglect” has the meaning given in s. 46.90 (1) (f).

(10) “Party” means the respondent, petitioner, guardian of the person, guardian of the estate, interested person, as defined in s. 54.01 (17), or any other person allowed by the court to participate in a guardianship of the person proceeding or proceeding for the appointment of a guardian of the estate.

(11) “Person” has the meaning given in s. 990.01 (26).

(12) “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.

(13) “Residence” has the meaning given in s. 55.01 (6t).

(14) “Respondent” means an adult for whom an order appointing a guardian of the estate or the appointment of a guardian of the person is sought.

(15) “Self-neglect” has the meaning given in s. 46.90 (1) (g).

(16) “Significant-connection state” means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence considering the factors in s. 53.21.

(17) “State,” notwithstanding s. 990.01 (40), means a state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

53.03 International application. A court of this state may treat a foreign country as if it were a state for the purpose of applying this subchapter and subchs. II, III, and V.

53.04 Communication between courts. (1) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in sub. (2), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

53.05 Cooperation between courts. (1) In a guardianship of the person proceeding or proceeding for appointment of a guardian of the estate in this state, a court of this state may request the appropriate court of another state to do any of the following:

(a) Hold an evidentiary hearing.

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

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

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

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

(f) 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 individual subject to a guardianship of the person or of the estate.

(g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in [45 CFR 160.103](#).

(2) If a court of another state in which a guardianship of the person proceeding or proceeding to appoint a guardianship of the estate is pending requests assistance of the kind provided in sub. (1), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

53.06 Taking testimony in another state. (1) In a guardianship of the person proceeding or proceeding for the appointment of a guardian of the estate, 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.

(2) In a guardianship of the person proceeding or proceeding for the appointment of a guardian of the estate, 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.

(3) 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.

SUBCHAPTER II JURISDICTION

53.21 Significant-connection factors. In determining under ss. 53.23 and 53.31 whether a respondent has

a significant connection with a particular state, the court shall consider all of the following:

(1) The location of and strength of connection to the respondent's family, other significant social connections, and service providers.

(2) The location of other persons required to be notified of the guardianship of the person proceeding or proceeding to appoint a guardian of the estate and the location of substantial evidence relating to the respondent.

(3) The length of time the respondent at any time was physically present in the state, past or current status as a resident, and the duration of any absence.

(4) The location of the resident's property.

(5) 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, work, social relationship, and receipt of services.

53.22 Exclusive basis. This subchapter provides the exclusive basis for personal jurisdiction for a court of this state to appoint a guardian of the person or issue an order appointing a guardian of the estate for an adult.

53.23 Jurisdiction. A court of this state has personal jurisdiction to appoint a guardian of the person or issue an order appointing a guardian of the estate for a respondent if any of the following is satisfied:

(1) This state is the respondent's home state.

(2) On the date the petition is filed, this state is a significant-connection state and any of the following is satisfied:

(a) 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.

(b) 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 all of the following are satisfied:

1. A petition for an appointment or order is not filed in the respondent's home state.

2. An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding, or, if an objection has been made, the objector has not established that exercise of jurisdiction by the court would be contrary to the interests of the respondent.

3. The court in this state concludes that it is an appropriate forum under the factors set forth in s. 53.26.

(3) This state does not have jurisdiction under either sub. (1) or (2), 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.

(4) The requirements for special jurisdiction under s. 53.24 are met.

53.24 Special jurisdiction. (1) A court of this state lacking jurisdiction under s. 53.23 (1) to (3) has special jurisdiction to do any of the following:

(a) Appoint a temporary guardian of the person or guardian of the estate under s. 54.50 in accordance with the standards and procedures and for the time periods specified in s. 54.50.

(b) Issue an order with respect to real or tangible personal property located in this state.

(c) Appoint a guardian of the person or guardian of the estate for an individual subject to a guardianship of the person or of the estate for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to s. 53.31.

(2) If a petition for the appointment of a temporary guardian 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 appointment of a temporary guardian.

53.25 Exclusive and continuing jurisdiction. Except as otherwise provided in s. 53.24, a court that has appointed a guardian of the person or issued an order appointing a guardian of the estate consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

53.26 Appropriate forum. (1) A court of this state having jurisdiction under s. 53.23 to appoint a guardian of the person or issue an order appointing a guardian of the estate may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction under sub. (1), 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 an order appointing a guardian of the estate be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including all of the following:

(a) Any expressed preference of the respondent.

(b) Whether abuse, neglect, self-neglect, or financial exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, self-neglect, or financial exploitation.

(c) The length of time the respondent was physically present in or had established residence in this or another state.

(d) The distance of the respondent from the court in each state.

(e) The financial circumstances of the respondent's estate.

(f) The nature and location of the evidence.

(g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.

(h) The familiarity of the court of each state with the facts and issues in the proceeding.

(i) If an appointment is made, the court's ability to monitor the conduct of the guardian of the person or guardian of the estate.

53.27 Jurisdiction declined by reason of conduct.

(1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian of the person or issue an order appointing a guardian of the estate because of unjustifiable conduct, the court may do any of the following:

(a) Decline to exercise jurisdiction.

(b) 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 to 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 an order appointing a guardian of the estate is filed in a court of another state having jurisdiction.

(c) Continue to exercise jurisdiction after considering all of the following:

1. 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.

2. Whether it is a more appropriate forum than the court of any other state under the factors set forth in s. 53.26.

3. Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of s. 53.23.

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian of the person or issue an order appointing a guardian of the estate 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 chapter.

53.28 Notice of proceeding. If a petition for the appointment of a guardian of the person or issuance of an order appointing a guardian of the estate 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.

53.29 Proceedings in more than one state. Except for a petition for the appointment of a temporary guardian or issuance of an order limited to property located in this state under s. 53.24 (1) (a) or (b), if a petition for the appointment of a guardian of the person or issuance of an order appointing a guardian of the estate is filed in this state and in another state and neither petition has been dismissed or withdrawn, all of the following rules apply:

(1) If the court in this state has jurisdiction under s. 53.23, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to s. 53.23 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under s. 53.23, 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.

SUBCHAPTER III

TRANSFER OF GUARDIANSHIP

53.31 Transfer of guardianship to another state.

(1) A guardian of the person or guardian of the estate appointed in this state may petition the court to transfer the guardianship to another state.

(2) Notice of a petition under sub. (1) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian under s. 54.38.

(3) On the court's own motion or on request of the guardian of the person or guardian of the estate, the individual subject to a guardianship of the person or of the estate, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed under sub. (1).

(4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian of the person or guardian of the estate 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 all of the following are satisfied:

(a) The individual subject to the guardianship of the person or of the estate 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 individual subject to the guardianship of the person or of the estate.

(c) For guardianship of the person, plans for care and services for the individual subject to the guardianship of the person in the other state are reasonable and sufficient.

(d) For guardianship of the estate, adequate arrangements will be made for management of the property of the individual subject to a guardianship of the estate.

(5) The court shall issue a final order confirming the transfer and terminating the guardianship upon its receipt of all of the following:

(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 s. 53.32.

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

(6) The court may at any time appoint a guardian ad litem to represent the interests of the respondent. The court shall appoint a guardian ad litem if an objection is made under sub. (4) (b).

53.32 Accepting guardianship transferred from another state. (1) To confirm transfer of a guardianship of the person or of the estate transferred to this state under provisions similar to s. 53.31, the guardian of the person or guardian of the estate must petition the court in this state to accept the guardianship. The petition must include a certified copy of the other state's provisional order of transfer. The petition shall also include a proposed order specifying the powers to be granted in this state and a sworn statement that, to the best of the petitioner's knowledge, the proposed order is consistent with the authority granted to the guardian in the other state.

(2) Notice of a petition under sub. (1) 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 an order appointing a guardian of the estate 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.

(3) On the court's own motion or on request of the guardian of the person or guardian of the estate, the individual subject to a guardianship of the person or of the estate, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed under sub. (1).

(4) The court shall issue an order provisionally granting a petition filed under sub. (1) unless any of the following circumstances occurs:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the individual subject to a guardianship of the person or of the estate or that the proposed powers to be given to the guardian significantly expand the powers granted to the guardian in the other state.

(b) The guardian of the person or guardian of the estate is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing the guardian of the person or guardian of the estate as guardian 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 s. 53.31 transferring the proceeding to this state.

(6) Not later than 60 days after issuance of a final order accepting transfer of a guardianship of the person or of the estate, the court shall determine whether the guardianship needs to be modified to conform to the law of this state. If a petitioner requests the expansion of powers that were granted to a guardian in another state, a hearing shall be held that conforms to the requirements of s. 54.63.

(7) In granting a petition under this section, the court shall recognize a guardianship order from the other state, including the determination of incapacity of the individual subject to a guardianship of the person or of the estate and the appointment of the guardian of the person or guardian of the estate.

(8) The denial by a court of this state of a petition to accept a guardianship transferred from another state does not affect the ability of the guardian of the person or of the estate to seek appointment as guardian in this state under s. 54.10 or 54.76 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

(9) The court may at any time appoint a guardian ad litem to represent the interests of the respondent or to assist the court in conforming the order to the laws of this state. The court shall appoint a guardian ad litem if an objection is made under sub. (4) (a).

SUBCHAPTER IV

REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

53.41 Registration of guardianship of the person orders. If a guardian of the person 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.

53.42 Registration of guardianship of the estate orders. If a guardian of the estate has been appointed in another state and a petition for an order to appoint a guardian of the estate is not pending in this state, the guardian of the estate appointed in the other state, after giving notice to the appointing court of an intent to register, may register the order appointing the guardian of the estate in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the individual subject to the guardianship of

the estate is located, certified copies of the order and letters of office and of any bond.

53.43 Effect of registration. (1) Upon registration of a guardianship order from another state, the guardian of the person or guardian of the estate 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, if the guardian of the person or of the estate is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(2) A court of this state may grant any relief available under this chapter and other law of this state to enforce a registered order.

SUBCHAPTER V UNIFORMITY; FEDERAL LAW

53.51 Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

53.52 Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, [15 USC 7001 to 7031](#), but does not modify, limit, or supersede section 101 (c) of that act, [15 USC 7001](#) (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, [15 USC 7003](#) (b).

SECTION 2. 54.30 (1) of the statutes is amended to read:

54.30 (1) JURISDICTION. Except as provided in s. 54.38 (1), the circuit court has subject matter jurisdiction over all petitions for guardianship. A guardianship of the estate of any individual, once granted, shall extend to all of the ward's income and assets in this state and shall exclude the jurisdiction of every other circuit court, except as provided in ch. 786. Jurisdiction under this subsection also extends to the petition by a foreign guardian for the receipt and acceptance of a foreign guardianship,

except as provided in s. 54.38 (1m) ~~ch. 53~~ and, if the petition is granted, to the accepted guardianship. Personal jurisdiction is subject to ch. 53.

SECTION 3. 54.30 (4) of the statutes is created to read:

54.30 (4) CONFLICTS OF JURISDICTION OR VENUE. Before making a determination of jurisdiction or venue under this section, the circuit court shall first make any applicable determination of jurisdiction or venue under ch. 53. If any determination of jurisdiction or venue made under this section conflicts with a determination made under ch. 53, the court shall apply the determination made under ch. 53.

SECTION 4. 54.34 (1) (intro.) of the statutes is amended to read:

54.34 (1) (intro.) ~~Any~~ Subject to ch. 53, any person may petition for the appointment of a guardian for an individual. The petition shall state all of the following, if known to the petitioner:

SECTION 5. 54.34 (3) (intro.) of the statutes is renumbered 54.34 (3) and amended to read:

54.34 (3) A petition for the receipt and acceptance by this state of a foreign guardianship of a foreign ward who resides in or intends to move to this state may include other petitions related to the foreign guardianship, such as a petition to modify the terms of the foreign guardianship, ~~and shall include all of the following:~~

SECTION 6. 54.34 (3) (a) to (j) of the statutes are repealed.

SECTION 7. 54.38 (1m) of the statutes is repealed.

SECTION 8. 54.44 (1) (c) 1. of the statutes is amended to read:

54.44 (1) (c) 1. If a motion for a hearing on a petition for receipt and acceptance of a foreign guardianship is made by the foreign ward, by a person who has received notice under s. 54.38 (1m) (a) 3. ~~53.32 (2)~~, or on the court's own motion, a hearing on the petition shall be heard within 90 days after the petition is filed.

SECTION 9. Initial applicability.

(1) This act first applies to guardianship proceedings initiated on the effective date of this subsection.