

Senate Bill 207

By: Senator McKoon of the 29th

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward,  
2 so as to enact the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act;  
3 to provide for a short title; to provide for definitions; to provide for international application;  
4 to provide for communications and cooperation between courts; to provide for taking  
5 testimony in another state; to provide for jurisdiction and special jurisdiction; to provide for  
6 jurisdiction declined by reason of conduct; to provide for notice of proceedings and  
7 proceedings in more than one state; to provide for transfer of guardianship or conservatorship  
8 to another state; to provide for acceptance of guardianship or conservatorship transferred  
9 from another state; to provide for registration and recognition from other states; to provide  
10 for uniformity of application and construction; to provide for relation to electronic signature;  
11 to provide for transitional provisions; to repeal certain provisions relating to procedure and  
12 transfers of guardianship and conservatorship; to repeal conflicting laws; and for other  
13 purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 style="text-align:center">**SECTION 1.**

16 Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, is  
17 amended by adding a new chapter to read as follows:

18 style="text-align:center">"CHAPTER 11

19 style="text-align:center">ARTICLE 1

20 29-11-1.

21 This chapter shall be known as and may be cited as the 'Uniform Adult Guardianship and  
22 Protective Proceedings Jurisdiction Act.'

23 29-11-2.

24 As used in this chapter, the term:

- 25 (1) 'Adult' means an individual who has attained 18 years of age.
- 26 (2) 'Conservator' means a person appointed by the court to administer the property of an
- 27 adult, including a person appointed under Article 2 of Chapter 5 of this title.
- 28 (3) 'Guardian' means a person appointed by the court to make decisions regarding the
- 29 person of an adult, including a person appointed under Article 2 of Chapter 4 of this title.
- 30 (4) 'Guardianship order' means an order appointing a guardian.
- 31 (5) 'Guardianship proceeding' means a judicial proceeding in which an order for the
- 32 appointment of a guardian is sought or has been issued.
- 33 (6) 'Incapacitated person' means an adult for whom a guardian has been appointed.
- 34 (7) 'Party' means the respondent, petitioner, guardian, conservator, or any other person
- 35 allowed by the court to participate in a guardianship or protective proceeding.
- 36 (8) 'Person,' except in the term 'incapacitated person' or 'protected person,' means an
- 37 individual, corporation, business trust, estate, trust, partnership, limited liability company,
- 38 association, joint venture, public corporation, government or governmental subdivision,
- 39 agency, or instrumentality, or any other legal or commercial entity.
- 40 (9) 'Protected person' means an adult for whom a protective order has been issued.
- 41 (10) 'Protective order' means an order appointing a conservator or other order related to
- 42 management of an adult's property.
- 43 (11) 'Protective proceeding' means a judicial proceeding in which a protective order is
- 44 sought or has been issued.
- 45 (12) 'Record' means information that is inscribed on a tangible medium or that is stored
- 46 in an electronic or other medium and is retrievable in perceivable form.
- 47 (13) 'Respondent' means an adult for whom a protective order or the appointment of a
- 48 guardian is sought.
- 49 (14) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the
- 50 United States Virgin Islands, a federally recognized Indian tribe, or any territory or
- 51 insular possession subject to the jurisdiction of the United States.

52 29-11-3.

53 A court of this state may treat a foreign country as if it were a state for the purpose of

54 applying this article and Articles 2, 3, and 5 of this chapter.

55 29-11-4.

56 (a) A court of this state may communicate with a court in another state concerning a

57 proceeding arising under this chapter. The court may allow the parties to participate in the

58 communication. Except as otherwise provided in subsection (b) of this Code section, the

59 court shall make a record of the communication. The record may be limited to the fact that  
60 the communication occurred.

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

63 29-11-5.

64 (a) In a guardianship or protective proceeding in this state, a court of this state may request  
65 the appropriate court of another state to do any of the following:

66 (1) Hold an evidentiary hearing;

67 (2) Order a person in that state to produce evidence or give testimony pursuant to  
68 procedures of that state;

69 (3) Order that an evaluation or assessment be made of the respondent;

70 (4) Order any appropriate investigation of a person involved in a proceeding;

71 (5) Forward to the court of this state a certified copy of the transcript or other record of  
72 a hearing under paragraph (1) of this subsection or any other proceeding, any evidence  
73 otherwise produced under paragraph (2) of this subsection, and any evaluation or  
74 assessment prepared in compliance with an order under paragraph (3) or (4) of this  
75 subsection;

76 (6) Issue any order necessary to assure the appearance in the proceeding of a person  
77 whose presence is necessary for the court to make a determination, including the  
78 respondent or the incapacitated or protected person; or

79 (7) Issue an order authorizing the release of medical, financial, criminal, or other relevant  
80 information in that state, including protected health information as defined in 45 C.F.R.  
81 160.103, as amended.

82 (b) If a court of another state in which a guardianship or protective proceeding is pending  
83 requests assistance of the kind provided in subsection (a) of this Code section, a court of  
84 this state has jurisdiction for the limited purpose of granting the request or making  
85 reasonable efforts to comply with the request.

86 29-11-6.

87 (a) In a guardianship or protective proceeding, in addition to other procedures that may be  
88 available, testimony of a witness who is located in another state may be offered by  
89 deposition or other means allowable in this state for testimony taken in another state. The  
90 court on its own motion may order that the testimony of a witness be taken in another state  
91 and may prescribe the manner in which and the terms upon which the testimony is to be  
92 taken.

93 (b) In a guardianship or protective proceeding, a court in this state may permit a witness  
 94 located in another state to be deposed or to testify by telephone or audiovisual or other  
 95 electronic means. A court of this state shall cooperate with the court of the other state in  
 96 designating an appropriate location for the deposition or testimony.

97 (c) Documentary evidence transmitted from another state to a court of this state by  
 98 technological means that do not produce an original writing may not be excluded from  
 99 evidence on an objection based on the best evidence rule.

100 ARTICLE 2

101 29-11-10.

102 (a) As used in this article, the term:

103 (1) 'Emergency' means a circumstance that likely will result in substantial harm to a  
 104 respondent's health, safety, or welfare, and for which the appointment of a guardian is  
 105 necessary because no other person has authority and is willing to act on the respondent's  
 106 behalf.

107 (2) 'Home state' means the state in which the respondent was physically present,  
 108 including any period of temporary absence, for at least six consecutive months  
 109 immediately before the filing of a petition for a protective order or the appointment of a  
 110 guardian; or if none, the state in which the respondent was physically present, including  
 111 any period of temporary absence, for at least six consecutive months ending within the  
 112 six months prior to the filing of the petition.

113 (3) 'Significant-connection state' means a state, other than the home state, with which a  
 114 respondent has a significant connection other than mere physical presence and in which  
 115 substantial evidence concerning the respondent is available.

116 (b) In determining under Code Section 29-11-12 and subsection (e) of Code Section  
 117 29-11-20 whether a respondent has a significant connection with a particular state, the  
 118 court shall consider:

119 (1) The location of the respondent's family and other persons required to be notified of  
 120 the guardianship or protective proceeding;

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

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

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

127 29-11-11.

128 This article provides the exclusive jurisdictional basis for a court of this state to appoint a  
129 guardian or issue a protective order for an adult.

130 29-11-12.

131 A court of this state has jurisdiction to appoint a guardian or issue a protective order for a  
132 respondent if:

133 (1) This state is the respondent's home state;

134 (2) On the date the petition is filed, this state is a significant-connection state and:

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

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

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

142 (ii) An objection to the court's jurisdiction is not filed by a person required to be  
143 notified of the proceeding; and

144 (iii) The court in this state concludes that it is an appropriate forum under the factors  
145 set forth in Code Section 29-11-15;

146 (3) This state does not have jurisdiction under either paragraph (1) or (2) of this Code  
147 section, the respondent's home state and all significant-connection states have declined  
148 to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction  
149 in this state is consistent with the Constitutions of this state and the United States; or

150 (4) The requirements for special jurisdiction under Code Section 29-11-13 are met.

151 29-11-13.

152 (a) A court of this state lacking jurisdiction under paragraphs (1) through (3) of Code  
153 Section 29-11-12 has special jurisdiction to do any of the following:

154 (1) Appoint a guardian in an emergency for a term not exceeding 90 days for a  
155 respondent who is physically present in this state;

156 (2) Issue a protective order with respect to real or tangible personal property located in  
157 this state; or

158 (3) Appoint a guardian or conservator for an incapacitated or protected person for whom  
159 a provisional order to transfer the proceeding from another state has been issued under  
160 procedures similar to Code Section 29-11-20.

161 (b) If a petition for the appointment of a guardian in an emergency is brought in this state  
162 and this state was not the respondent's home state on the date the petition was filed, the  
163 court shall dismiss the proceeding at the request of the court of the home state, if any,  
164 whether dismissal is requested before or after the emergency appointment.

165 29-11-14.

166 Except as otherwise provided in Code Section 29-11-13, a court that has appointed a  
167 guardian or issued a protective order consistent with this Act has exclusive and continuing  
168 jurisdiction over the proceeding until it is terminated by the court or the appointment or  
169 order expires by its own terms.

170 29-11-15.

171 (a) A court of this state having jurisdiction under Code Section 29-11-12 to appoint a  
172 guardian or issue a protective order may decline to exercise its jurisdiction if it determines  
173 at any time that a court of another state is a more appropriate forum.

174 (b) If a court of this state declines to exercise its jurisdiction under subsection (a) of this  
175 Code section, it shall either dismiss or stay the proceeding. The court may impose any  
176 condition the court considers just and proper, including the condition that a petition for the  
177 appointment of a guardian or issuance of a protective order be filed promptly in another  
178 state.

179 (c) In determining whether it is an appropriate forum, the court shall consider all relevant  
180 factors, including:

181 (1) Any expressed preference of the respondent;

182 (2) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to  
183 occur and which state could best protect the respondent from the abuse, neglect, or  
184 exploitation;

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

187 (4) The distance of the respondent from the court in each state;

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

189 (6) The nature and location of the evidence;

190 (7) The ability of the court in each state to decide the issue expeditiously and the  
191 procedures necessary to present evidence;

192 (8) The familiarity of the court of each state with the facts and issues in the proceeding;  
193 and

194 (9) If an appointment were made, the court's ability to monitor the conduct of the  
195 guardian or conservator.

196 29-11-16.

197 (a) If at any time a court of this state determines that it acquired jurisdiction to appoint a  
 198 guardian or issue a protective order because of unjustifiable conduct, the court may:

199 (1) Decline to exercise jurisdiction;

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

205 (3) Continue to exercise jurisdiction after considering:

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

208 (B) Whether it is a more appropriate forum than the court of any other state under the  
 209 factors set forth in subsection (c) of Code Section 29-11-15; and

210 (C) Whether the court of any other state would have jurisdiction under factual  
 211 circumstances in substantial conformity with the jurisdictional standards of Code  
 212 Section 29-11-12.

213 (b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or  
 214 issue a protective order because a party seeking to invoke its jurisdiction engaged in  
 215 unjustifiable conduct, it may assess against that party necessary and reasonable expenses,  
 216 including attorney's fees, investigative fees, court costs, communication expenses, witness  
 217 fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses  
 218 of any kind against this state or a governmental subdivision, agency, or instrumentality of  
 219 this state unless authorized by law other than this chapter.

220 29-11-17.

221 If a petition for the appointment of a guardian or issuance of a protective order is brought  
 222 in this state and this state was not the respondent's home state on the date the petition was  
 223 filed, in addition to complying with the notice requirements of this state, notice of the  
 224 petition must be given to those persons who would be entitled to notice of the petition if  
 225 a proceeding were brought in the respondent's home state. The notice must be given in the  
 226 same manner as notice is required to be given in this state.

227 29-11-18.

228 Except for a petition for the appointment of a guardian in an emergency or issuance of a  
 229 protective order limited to property located in this state under paragraph (1) or (2) of  
 230 subsection (a) of Code Section 29-11-13, if a petition for the appointment of a guardian or

231 issuance of a protective order is filed in this state and in another state and neither petition  
 232 has been dismissed or withdrawn, the following rules apply:

233 (1) If the court in this state has jurisdiction under Code Section 29-11-12, it may proceed  
 234 with the case unless a court in another state acquires jurisdiction under provisions similar  
 235 to Code Section 29-11-12 before the appointment or issuance of the order; and

236 (2) If the court in this state does not have jurisdiction under Code Section 29-11-12,  
 237 whether at the time the petition is filed or at any time before the appointment or issuance  
 238 of the order, the court shall stay the proceeding and communicate with the court in the  
 239 other state. If the court in the other state has jurisdiction, the court in this state shall  
 240 dismiss the petition unless the court in the other state determines that the court in this  
 241 state is a more appropriate forum.

242 ARTICLE 3

243 29-11-20.

244 (a) A guardian or conservator appointed in this state may petition the court to transfer the  
 245 guardianship or conservatorship to another state.

246 (b) Notice of a petition under subsection (a) of this Code section shall be given to the  
 247 persons that would be entitled to notice of a petition in this state for the appointment of a  
 248 guardian or conservator.

249 (c) On the court's own motion or on request of the guardian or conservator, the  
 250 incapacitated or protected person, or other person required to be notified of the petition, the  
 251 court shall hold a hearing on a petition filed pursuant to subsection (a) of this Code section.

252 (d) The court shall issue an order provisionally granting a petition to transfer a  
 253 guardianship and shall direct the guardian to petition for guardianship in the other state if  
 254 the court is satisfied that the guardianship will be accepted by the court in the other state  
 255 and the court finds that:

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

258 (2) An objection to the transfer has not been made or, if an objection has been made, the  
 259 objector has not established that the transfer would be contrary to the interests of the  
 260 incapacitated person; and

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

263 (e) The court shall issue a provisional order granting a petition to transfer a  
 264 conservatorship and shall direct the conservator to petition for conservatorship in the other

265 state if the court is satisfied that the conservatorship will be accepted by the court of the  
266 other state and the court finds that:

267 (1) The protected person is physically present in or is reasonably expected to move  
268 permanently to the other state, or the protected person has a significant connection to the  
269 other state considering the factors in subsection (b) of Code Section 29-11-10;

270 (2) An objection to the transfer has not been made or, if an objection has been made, the  
271 objector has not established that the transfer would be contrary to the interests of the  
272 protected person; and

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

275 (f) The court shall issue a final order confirming the transfer and terminating the  
276 guardianship or conservatorship upon its receipt of:

277 (1) A provisional order accepting the proceeding from the court to which the proceeding  
278 is to be transferred which is issued under provisions similar to Code Section 29-11-21;  
279 and

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

281 29-11-21.

282 (a) To confirm transfer of a guardianship or conservatorship transferred to this state under  
283 provisions similar to Code Section 29-11-20, the guardian or conservator must petition the  
284 court in this state to accept the guardianship or conservatorship. The petition must include  
285 a certified copy of the other state's provisional order of transfer.

286 (b) Notice of a petition under subsection (a) of this Code section shall be given to those  
287 persons that would be entitled to notice if the petition were a petition for the appointment  
288 of a guardian or issuance of a protective order in both the transferring state and this state.  
289 The notice must be given in the same manner as notice is required to be given in this state.

290 (c) On the court's own motion or on request of the guardian or conservator, the  
291 incapacitated or protected person, or other person required to be notified of the proceeding,  
292 the court shall hold a hearing on a petition filed pursuant to subsection (a) of this Code  
293 section.

294 (d) The court shall issue an order provisionally granting a petition filed under  
295 subsection (a) of this Code section unless:

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

298 (2) The guardian or conservator is ineligible for appointment in this state.

299 (e) The court shall issue a final order accepting the proceeding and appointing the guardian  
300 or conservator as guardian or conservator in this state upon its receipt from the court from

301 which the proceeding is being transferred of a final order issued under provisions similar  
 302 to Code Section 29-11-20 transferring the proceeding to this state.

303 (f) Not later than 90 days after issuance of a final order accepting transfer of a  
 304 guardianship or conservatorship, the court shall determine whether the guardianship or  
 305 conservatorship needs to be modified to conform to the law of this state.

306 (g) In granting a petition under this Code section, the court shall recognize a guardianship  
 307 or conservatorship order from the other state, including the determination of the  
 308 incapacitated or protected person's incapacity and the appointment of the guardian or  
 309 conservator.

310 (h) The denial by a court of this state of a petition to accept a guardianship or  
 311 conservatorship transferred from another state does not affect the ability of the guardian  
 312 or conservator to seek appointment as guardian or conservator in this state under Article 2  
 313 of Chapter 4 and Article 2 of Chapter 5 of this title if the court has jurisdiction to make an  
 314 appointment other than by reason of the provisional order of transfer.

315 ARTICLE 4

316 29-11-30.

317 If a guardian has been appointed in another state and a petition for the appointment of a  
 318 guardian is not pending in this state, the guardian appointed in the other state, after giving  
 319 notice to the appointing court of an intent to register, may register the guardianship order  
 320 in this state by filing as a foreign judgment in a court, in any appropriate county of this  
 321 state, certified copies of the order and letters of office.

322 29-11-31.

323 If a conservator has been appointed in another state and a petition for a protective order is  
 324 not pending in this state, the conservator appointed in the other state, after giving notice to  
 325 the appointing court of an intent to register, may register the protective order in this state  
 326 by filing as a foreign judgment in a court of this state, in any county in which property  
 327 belonging to the protected person is located, certified copies of the order and letters of  
 328 office and of any bond.

329 29-11-32.

330 (a) Upon registration of a guardianship or protective order from another state, the guardian  
 331 or conservator may exercise in this state all powers authorized in the order of appointment  
 332 except as prohibited under the laws of this state, including maintaining actions and

333 proceedings in this state and, if the guardian or conservator is not a resident of this state,  
 334 subject to any conditions imposed upon nonresident parties.  
 335 (b) A court of this state may grant any relief available under this chapter and other law of  
 336 this state to enforce a registered order.

337 ARTICLE 5

338 29-11-40.

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

341 29-11-41.

342 This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global  
 343 and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit,  
 344 or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic  
 345 delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section  
 346 7003(b).

347 29-11-42.

348 (a) This chapter applies to guardianship and protective proceedings begun on or after  
 349 July 1, 2015.

350 (b) Articles 1, 3, and 4 and Code Sections 29-11-40 and 29-11-41 apply to proceedings  
 351 begun before July 1, 2015, regardless of whether a guardianship or protective order has  
 352 been issued."

353 **SECTION 2.**

354 Article 9 of Chapter 4 of Title 29 of the Official Code of Georgia Annotated, relating to  
 355 jurisdiction of guardians of adults, is amended by repealing Parts 2 and 3, relating,  
 356 respectively, to procedure and transfers of guardianship, and designating said parts as  
 357 reserved.

358 **SECTION 3.**

359 Article 13 of Chapter 5 of Title 29 of the Official Code of Georgia Annotated, relating to  
 360 foreign conservators of adults, is amended by repealing Parts 2 and 3, relating to transfer of  
 361 conservatorship, and designating said parts as reserved.

362

**SECTION 4.**

363 (a) This Act shall apply to guardianship and protective proceedings begun on or after  
364 July 1, 2015, except as provided for under subsection (b).

365 (b) Articles 1, 3, and 4 and Code Sections 29-11-40 and 29-11-41 apply to proceedings  
366 begun before July 1, 2015, regardless of whether a guardianship or protective order has  
367 been issued.

368

**SECTION 5.**

369 All laws and parts of laws in conflict with this Act are repealed.