

The Senate Committee on Judiciary offered the following substitute to SB 207:

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 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 CHAPTER 11
19 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 as provided for under Chapter 10
 100 of Title 24.

101 ARTICLE 2

102 29-11-10.

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

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

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

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

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

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

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

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

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

128 29-11-11.

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

131 29-11-12.

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

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

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

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

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

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

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

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

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

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

152 29-11-13.

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

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

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

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

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

166 29-11-14.

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

171 29-11-15.

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

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

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

182 (1) Any expressed preference of the respondent;

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

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

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

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

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

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

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

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

197 29-11-16.

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

200 (1) Decline to exercise jurisdiction;

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

206 (3) Continue to exercise jurisdiction after considering:

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

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

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

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

221 29-11-17.

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

228 29-11-18.

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

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

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

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

243 ARTICLE 3

244 29-11-20.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

282 29-11-21.

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

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

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

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

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

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

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

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

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

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

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

316 ARTICLE 4

317 29-11-30.

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

323 29-11-31.

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

330 29-11-32.

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

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

338 ARTICLE 5

339 29-11-40.

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

342 29-11-41.

343 This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global
 344 and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit,
 345 or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic
 346 delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section
 347 7003(b).

348 29-11-42.

349 (a) This chapter applies to guardianship and protective proceedings begun on or after
 350 July 1, 2016.

351 (b) Articles 1, 3, and 4 and Code Sections 29-11-40 and 29-11-41 apply to proceedings
 352 begun before July 1, 2016, regardless of whether a guardianship or protective order has
 353 been issued."

354 **SECTION 2.**

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

359 **SECTION 3.**

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

363

SECTION 4.

364

(a) This Act shall apply to guardianship and protective proceedings begun on or after July 1, 2016, except as provided for under subsection (b).

365

366

(b) Articles 1, 3, and 4 and Code Sections 29-11-40 and 29-11-41 apply to proceedings begun before July 1, 2016, regardless of whether a guardianship or protective order has been issued.

367

368

369

SECTION 5.

370

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