

House Bill 954 (COMMITTEE SUBSTITUTE)

By: Representatives Efration of the 104th, Cooper of the 43rd, Abrams of the 89th, England of the 116th, Trammell of the 132nd, and others

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 Conservatorship Proceedings
3 Jurisdiction Act"; to provide for a short title; to provide for definitions; to provide for
4 international application; to provide for communications and cooperation between courts; to
5 provide for taking testimony in another state; to provide for jurisdiction and special
6 jurisdiction; to provide for jurisdiction declined by reason of conduct; to provide for notice
7 of proceedings and proceedings in more than one state; to provide for transfer of
8 guardianship or conservatorship to another state; to provide for acceptance of guardianship
9 or conservatorship transferred from another state; to provide for registration and recognition
10 from other states; to provide for uniformity of application and construction; to provide for
11 relation to electronic signature; to provide for applicability; to repeal certain provisions
12 relating to procedure and transfers of guardianship and conservatorship; to provide for related
13 matters; to repeal conflicting laws; and for other 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 and may be cited as the 'Uniform Adult Guardianship and
22 Conservatorship Proceedings Jurisdiction Act.'

23 29-11-2.

24 As used in this chapter, the term:

25 (1) 'Conservatorship order' means an order appointing a conservator or other order
26 related to management of an adult's property.

27 (2) 'Conservatorship proceeding' means a judicial proceeding in which a conservatorship
28 order is sought or has been issued.

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

33 (4) 'Guardianship order' means an order appointing a guardian.

34 (5) 'Guardianship proceeding' means a judicial proceeding in which an order for the
35 appointment of a guardian is sought or has been issued.

36 (6) 'Home state' means the state in which the respondent was physically present,
37 including any period of temporary absence, for at least six consecutive months
38 immediately before the filing of a petition for a conservatorship order or the appointment
39 of a guardian or, if none, the state in which the respondent was physically present,
40 including any period of temporary absence, for at least six consecutive months ending
41 within the six months prior to the filing of the petition.

42 (7) 'Incapacitated person' means an adult for whom a guardian has been appointed.

43 (8) 'Party' means the respondent, petitioner, guardian, conservator, or any other person
44 allowed by the court to participate in a guardianship proceeding or conservatorship
45 proceeding.

46 (9) 'Person,' except in the term 'incapacitated person' or 'protected person,' means an
47 individual, corporation, business trust, estate, trust, partnership, limited liability company,
48 association, joint venture, public corporation, government or governmental subdivision,
49 agency, or instrumentality or any other legal or commercial entity.

50 (10) 'Protected person' means an adult for whom a conservatorship order has been issued.

51 (11) 'Record' means information that is inscribed on a tangible medium or that is stored
52 in an electronic or other medium and is retrievable in perceivable form.

53 (12) 'Respondent' means an adult for whom a conservatorship order or the appointment
54 of a guardian is sought.

55 (13) 'Significant-connection state' means a state, other than the home state, with which
56 a respondent has a significant connection other than mere physical presence and in which
57 substantial evidence concerning the respondent is available.

58 (14) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the
59 United States Virgin Islands, a federally recognized Indian tribe, or any territory or
60 insular possession subject to the jurisdiction of the United States.

61 29-11-3.

62 A court of this state may treat a foreign country as if it were a state for the purpose of
63 applying this article and Articles 2, 3, and 5 of this chapter.

64 29-11-4.

65 (a) A court of this state may communicate with a court in another state concerning a
66 proceeding arising under this chapter. The court may allow the parties to participate in the
67 communication. Except as otherwise provided in subsection (b) of this Code section, the
68 court shall make a record of the communication. The record may be limited to the fact that
69 the communication occurred.

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

72 29-11-5.

73 (a) In a guardianship proceeding or conservatorship proceeding in this state, a court of this
74 state may request the appropriate court of another state to do any of the following:

75 (1) Hold an evidentiary hearing;

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

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

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

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

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

88 (7) Issue an order authorizing the release of medical, financial, criminal, or other relevant
89 information in that state, including protected health information as defined in 45 C.F.R.
90 160.103, as amended.

91 (b) If a court of another state in which a guardianship proceeding or conservatorship
 92 proceeding is pending requests a court of this state to do any action included in subsection
 93 (a) of this Code section, such court of this state shall have jurisdiction for the limited
 94 purpose of granting the request or making reasonable efforts to comply with the request.

95 29-11-6.

96 (a) In a guardianship proceeding or conservatorship proceeding, in addition to other
 97 procedures that may be available, testimony of a witness who is located in another state
 98 may be offered by deposition or other means allowable in this state for testimony taken in
 99 another state. The court on its own motion may order that the testimony of a witness be
 100 taken in another state and may prescribe the manner in which and the terms upon which the
 101 testimony is to be taken.

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

106 (c) Documentary evidence transmitted from another state to a court of this state by
 107 technological means that do not produce an original writing may not be excluded from
 108 evidence on an objection based on the best evidence rule as provided for under Chapter 10
 109 of Title 24.

110 ARTICLE 2

111 29-11-10.

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

115 (1) The location of the respondent's family and other persons required to be notified of
 116 the guardianship proceeding or conservatorship proceeding;

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

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

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

123 29-11-11.

124 This article provides the exclusive jurisdictional basis for a court of this state to appoint a
 125 guardian or issue a conservatorship order for an adult.

126 29-11-12.

127 A court of this state has jurisdiction to appoint a guardian or issue a conservatorship order
 128 for a respondent if:

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

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

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

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

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

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

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

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

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

147 29-11-13.

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

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

152 (2) Issue a conservatorship order with respect to real or tangible personal property
 153 located in this state; or

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

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

161 29-11-14.

162 Except as otherwise provided in Code Section 29-11-13, a court that has appointed a
 163 guardian or issued a conservatorship order consistent with this chapter shall have exclusive
 164 and continuing jurisdiction over the proceeding until it is terminated by the court or the
 165 appointment or order expires by its own terms.

166 29-11-15.

167 (a) A court of this state having jurisdiction under Code Section 29-11-12 to appoint a
 168 guardian or conservator may decline to exercise its jurisdiction if it determines at any time
 169 that a court of another state is a more appropriate forum.

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

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

177 (1) Any expressed preference of the respondent;

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

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

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

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

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

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

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

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

192 29-11-16.

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

195 (1) Decline to exercise jurisdiction;

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

201 (3) Continue to exercise jurisdiction after considering:

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

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

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

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

216 29-11-17.

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

223 29-11-18.

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

227 issuance of a conservatorship order is filed in this state and in another state and neither
 228 petition has been dismissed or withdrawn, the following rules shall apply:

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

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

238 ARTICLE 3

239 29-11-20.

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

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

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

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

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

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

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

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

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

264 (1) The protected person is physically present in or is reasonably expected to move
265 permanently to the other state or the protected person has a significant connection to the
266 other state considering the factors in Code Section 29-11-10;

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

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

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

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

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

278 29-11-21.

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

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

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

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

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

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

297 (e) The court shall issue a final order accepting the proceeding and appointing the guardian
 298 or conservator as guardian or conservator in this state upon its receipt from the court from
 299 which the proceeding is being transferred of a final order issued under provisions similar
 300 to Code Section 29-11-20 transferring the proceeding to this state.

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

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

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

313 ARTICLE 4

314 29-11-30.

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

320 29-11-31.

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

327 29-11-32.

328 (a) Upon registration of a guardianship order or conservatorship order from another state,
 329 the guardian or conservator may exercise in this state all powers authorized in the order of

330 appointment except as prohibited under the laws of this state, including maintaining actions
 331 and proceedings in this state and, if the guardian or conservator is not a resident of this
 332 state, subject to any conditions imposed upon nonresident parties.

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

335 ARTICLE 5

336 29-11-40.

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

339 29-11-41.

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

345 29-11-42.

346 (a) This chapter shall apply to guardianship proceedings and conservatorship proceedings
 347 begun on or after July 1, 2016.

348 (b) Articles 1, 3, and 4 of this chapter and Code Sections 29-11-40 and 29-11-41 shall
 349 apply to proceedings begun before July 1, 2016, regardless of whether a guardianship order
 350 or conservatorship order has been issued."

351 **SECTION 2.**

352 Said title is further amended by repealing Parts 2 and 3 of Article 9 of Chapter 4, relating,
 353 respectively, to procedure and transfer of guardianship, and designating said parts as
 354 reserved.

355 **SECTION 3.**

356 Said title is further amended by repealing Parts 2 and 3 of Article 13 of Chapter 5, relating
 357 to transfer of conservatorship, and designating said parts as reserved.

358 **SECTION 4.**

359 Said title is further amended by revising subsection (a) of Code Section 29-4-95, relating to
360 the definition of "foreign guardian" and the sale of ward's property, as follows:

361 "(a) For purposes of this part, a 'foreign guardian' is a guardian or other person who has
362 been given responsibility by a court of competent jurisdiction in another state or territory
363 governed by the Constitution of the United States for the care of an incapacitated adult
364 referred to as the 'ward' and whose guardianship has not been transferred to and accepted
365 in this state pursuant to the provisions of ~~Part 2 of this article~~ Article 3 of Chapter 11 of this
366 title."

367 **SECTION 5.**

368 Said title is further amended by revising subsection (a) of Code Section 29-5-135, relating
369 to the definition of "foreign conservator" and the sale or disposal of property, as follows:

370 "(a) For purposes of this part, the term 'foreign conservator' means a conservator or other
371 person who has been given responsibility by a court of competent jurisdiction in another
372 state or territory governed by the Constitution of the United States for the care of the
373 property of an incapacitated adult, referred to as the ward, and whose conservatorship has
374 not been transferred to and accepted in this state pursuant to the provisions of ~~Part 2 of this~~
375 ~~article~~ Article 3 of Chapter 11 of this title."

376 **SECTION 6.**

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