



SPONSOR: Sen. Blevins & Rep. Valihura

DELAWARE STATE SENATE
144th GENERAL ASSEMBLY

SENATE BILL NO. 281

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO THE DETERMINATION OF JURISDICTION IN PROCEEDINGS FOR GUARDIANSHIP AND CONSERVATORSHIPS FOR INCAPACITATED ADULTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

1 Section 1. Amend the Heading of §3901, Title 12 of the Delaware Code to read as follows:

2 “§ 3901. Appointment of guardians for disabled persons.”

3 Section 2. Amend § 3901(a), Title 12 of the Delaware Code by deleting the first sentence of that subsection and
4 substituting in lieu thereof the following

5 “(a) The Court of Chancery shall have the power to appoint guardians for the person or property, or
6 both, of any disabled person pursuant to Chapters 39 and 39A of Title 12. ”

7 Section 3. Amend § 3904(a), Title 12 of the Delaware Code by deleting that subsection, and by substituting in lieu
8 thereof, the following:

9 “(a) A guardian, conservator, committee or other similar fiduciary, appointed by an appropriate court of
10 another jurisdiction to manage the property of a disabled person may, subject to the provisions of subsection (c) of this
11 section, exercise in this State all powers of office, including the power to sell, purchase or mortgage real estate in the State;
12 collect, receipt for and take possession of money due, tangible personal property or an instrument evidencing a debt,
13 obligation, stock or chose in action located in this State and remove it to the other jurisdiction.”

14 Section 4. Amend § 3904(b), Title 12 of the Delaware Code by deleting that subsection, and by substituting in lieu
15 thereof, the following:

16 “(b) A guardian of the person, or other like fiduciary, appointed by an appropriate court of another
17 jurisdiction to care for the person of a disabled person, whenever such disabled person is brought into the State for care and
18 maintenance, such foreign fiduciary may, subject to the provisions of subsection (c) of this section, exercise all powers
19 granted by the other jurisdiction for the care and protection of the person of such nonresident disabled person.”

20 Section 5. Amend Title 12 of the Delaware Code by inserting therein a new Chapter 39A, Uniform Adult
21 Guardianship and Protective Proceedings Jurisdiction Act to read as follows:

22 “CHAPTER 39A. UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE
23 PROCEEDINGS JURISDICTION ACT.

24 § 39A-101. Definitions. For purposes of this Chapter:

25 (1) ‘Adult’ means an individual who has attained 18 years of age.

26 (2) ‘Conservator’ is a ‘guardian of the property’ as that term is used in Title 12 of the Delaware Code.

27 (3) ‘Court’ means the Court of Chancery

28 (4) ‘Emergency’ means the respondent is in danger of incurring imminent serious physical harm or
29 substantial economic loss or expense.

30 (5) ‘Guardian’ is a ‘guardian of the person’ as that term is used in Title 12 of the Delaware Code.

31 (6) ‘Guardianship order’ means an order appointing a guardian.

32 (7) ‘Guardianship proceeding’ means a judicial proceeding in which an order for the appointment of a
33 guardian is sought or has been issued.

34 (8) ‘Home state’ means the state in which the respondent was physically present, including any period of
35 temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the
36 appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of
37 temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

38 (9) ‘Incapacitated person’ shall mean a ‘disabled person’ as that term is defined in § 3901(a)(2) of
39 Title 12.

40 (10) ‘Party’ means the respondent, petitioner, guardian, conservator, or any other person allowed by the
41 Court to participate in a guardianship or protective proceeding.

42 (11) ‘Person,’ except in the term incapacitated person or protected person, means an individual,
43 corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public
44 corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

45 (12) ‘Protected person’ means an adult for whom a protective order has been issued.

46 (13) ‘Protective order’ means an order appointing a ‘guardian of the property’ as that term is used in
47 Title 12 of the Delaware Code.

48 (14) ‘Protective proceeding’ means a judicial proceeding in which a protective order is sought or has
49 been issued.

50 (15) ‘Record’ means information that is inscribed on a tangible medium or that is stored in an electronic
51 or other medium and is retrievable in perceivable form.

52 (16) 'Respondent' means an adult for whom a protective order or the appointment of a guardian is
53 sought.

54 (17) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States
55 Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the
56 United States.

57 (18) 'Significant-connection state' means a state, other than the Home state, with which a respondent has a
58 significant connection other than mere physical presence and in which substantial evidence concerning the respondent is
59 available. In determining under Sections 39A-201 and Section 39A-301(e) whether a respondent has a significant
60 connection with a particular state, the Court shall consider:

- 61 a. The location of the respondent's family and other persons required to be notified of the
62 guardianship or protective proceeding;
- 63 b. The length of time the respondent at any time was physically present in the state and the
64 duration of any absence;
- 65 c. The location of the respondent's property; and
- 66 d. The extent to which the respondent has ties to the state such as voting registration, state or local tax
67 return filing, vehicle registration, driver's license, social relationship, and receipt of services.

68 § 39A-102. INTERNATIONAL APPLICATION OF ACT. The Court may treat a foreign country as if it were a
69 state for the purpose of applying this Chapter.

70 §39A-103. COMMUNICATION BETWEEN COURTS.

71 (a) The Court may communicate with a court in another state concerning a proceeding arising under
72 this Chapter. The Court may allow the parties to participate in the communication. Except as otherwise provided in
73 subsection (b), the Court shall make a record of the communication. The record may be limited to the fact that the
74 communication occurred.

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

77 § 39A-104. COOPERATION BETWEEN COURTS.

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

- 80 (1) Hold an evidentiary hearing;
- 81 (2) Order a person in that state to produce evidence or give testimony pursuant to procedures

- 82 of that state;
- 83 (3) Order that an evaluation or assessment be made of the respondent;
- 84 (4) Order any appropriate investigation of a person involved in a proceeding;
- 85 (5) Forward to the Court a certified copy of the transcript or other record of a hearing under
- 86 paragraph (1) or any other proceeding, any evidence otherwise produced under paragraph
- 87 (2), and any evaluation or assessment prepared in compliance with an order under
- 88 paragraph (3) or (4);
- 89 (6) Issue any order necessary to assure the appearance in the proceeding of a person whose
- 90 presence is necessary for the Court to make a determination, including the respondent or
- 91 the incapacitated or protected person;
- 92 (7) Issue an order authorizing the release of medical, financial, criminal, or other relevant
- 93 information in that state, including protected health information as defined in 45 C.F.R.
- 94 Section 164.504.

95 (b) If a court of another state in which a guardianship or protective proceeding is pending requests

96 assistance of the kind provided in subsection (a), the Court has jurisdiction for the limited purpose of granting the request or

97 making reasonable efforts to comply with the request.

98 § 39A-105. TAKING TESTIMONY IN ANOTHER STATE.

99 (a) In a guardianship or protective proceeding, in addition to other procedures that may be available,

100 testimony of a witness who is located in another state may be offered by deposition or other means allowable in this State

101 for testimony taken in another state. The Court on its own motion may order that the testimony of a witness be taken in

102 another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

103 (b) In a guardianship or protective proceeding, a court in this State may permit a witness located in

104 another state to be deposed or to testify by telephone or audiovisual or other electronic means. The Court shall cooperate

105 with the court 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 technological

107 means that do not produce an original writing may not be excluded from evidence on an objection based on the means of

108 transmission.

109 § 39A-201. JURISDICTION. The Court has jurisdiction to appoint a guardian or issue a protective order for a

110 respondent if:

111 1. This State is the respondent's Home state;

- 112 2. On the date the petition is filed, this State is a Significant-connection state and:
- 113 (A) The respondent does not have a Home state or a court of the respondent's Home state has declined
- 114 to exercise jurisdiction because this State is a more appropriate forum; or
- 115 (B) The respondent has a Home state, a petition for an appointment or order is not pending in a court
- 116 of that state or another Significant-connection state, and, before the Court makes the appointment
- 117 or issues the order:
- 118 (i) A petition for an appointment or order is not filed in the respondent's Home state;
- 119 (ii) An objection to the Court's jurisdiction is not filed by a person required to be notified of the
- 120 proceeding; and
- 121 (iii) The Court concludes that it is an appropriate forum under the factors set forth in Section
- 122 204;
- 123 3. This State does not have jurisdiction under either paragraph (1) or (2), the respondent's Home state and
- 124 all Significant-connection states have declined to exercise jurisdiction because this State is the more appropriate forum, and
- 125 jurisdiction in this State is consistent with the constitutions of this State and the United States; or
- 126 4. The requirements for special jurisdiction under Section 202 are met.

127 § 39A-202. SPECIAL JURISDICTION.

- 128 (a) The Court lacking jurisdiction under Section 201 has special jurisdiction to do any of the
- 129 following:
- 130 (1) Appoint a guardian in an emergency pursuant to § 3901 of Title 12 for a term not exceeding
- 131 30 days for a respondent who is physically present in this State;
- 132 (2) Issue a protective order with respect to real or tangible personal property located in this
- 133 State;
- 134 (3) Appoint a guardian or conservator for an incapacitated or protected person for whom a
- 135 provisional order to transfer the proceeding from another state has been issued under
- 136 procedures similar to Section 301.
- 137 (b) If a petition for the appointment of a guardian in an emergency is brought in this State pursuant to
- 138 §3901 of Title 12 and this State was not the respondent's Home state on the date the petition was filed, the Court shall
- 139 dismiss the proceeding at the request of the court of the Home state, if any, whether dismissal is requested before or after
- 140 the emergency appointment.

141 §39A-203. EXCLUSIVE AND CONTINUING JURISDICTION. Except as otherwise provided in Section 202, a
142 court that has appointed a guardian or issued a protective order consistent with this act has exclusive and continuing
143 jurisdiction over the proceeding until it is terminated by the Court or the appointment or order expires by its own terms.

144 § 39A-204. APPROPRIATE FORUM.

145 (a) The Court having jurisdiction under Section 201 to appoint a guardian or issue a protective order
146 may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

147 (b) If the Court declines to exercise its jurisdiction under subsection (a), it shall either dismiss or stay
148 the proceeding. The Court may impose any condition the Court considers just and proper, including the condition that a
149 petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

150 (c) In determining whether it is an appropriate forum, the Court shall consider all relevant factors,
151 including:

- 152 (1) Any expressed preference of the respondent;
- 153 (2) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur
154 and which state could best protect the respondent from the abuse, neglect, or exploitation;
- 155 (3) The length of time the respondent was physically present in or was a legal resident of this or
156 another state;
- 157 (4) The distance of the respondent from the court in each state;
- 158 (5) The financial circumstances of the respondent's estate;
- 159 (6) The nature and location of the evidence;
- 160 (7) The ability of the court in each state to decide the issue expeditiously and the procedures
161 necessary to present evidence;
- 162 (8) The familiarity of the court of each state with the facts and issues in the proceeding; and
- 163 (9) If an appointment were made, the court's ability to monitor the conduct of the guardian or
164 conservator.

165 §39A-205. JURISDICTION DECLINED BY REASON OF CONDUCT.

166 (a) If at any time the Court determines that it acquired jurisdiction to appoint a guardian or issue a
167 protective order because of unjustifiable conduct, the Court may:

- 168 (1) Decline to exercise jurisdiction;
- 169 (2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure
170 the health, safety, and welfare of the respondent or the protection of the respondent's

171 property or prevent a repetition of the unjustifiable conduct, including staying the
172 proceeding until a petition for the appointment of a guardian or issuance of a protective
173 order is filed in a court of another state having jurisdiction; or

- 174 (3) Continue to exercise jurisdiction after considering:
- 175 A. The extent to which the respondent and all persons required to be notified of
 - 176 the proceedings have acquiesced in the exercise of the Court's jurisdiction;
 - 177 B. Whether it is a more appropriate forum than the court of any other state under
 - 178 the factors set forth in Section 205(c); and
 - 179 C. Whether the court of any other state would have jurisdiction under factual
 - 180 circumstances in substantial conformity with the jurisdictional standards of
 - 181 Section 202.

182 (b) If the Court determines that it acquired jurisdiction to appoint a guardian or issue a protective order
183 because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party
184 necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses,
185 witness fees and expenses, and travel expenses. The Court may not assess fees, costs, or expenses of any kind against this
186 State or a governmental subdivision, agency, or instrumentality of this State unless authorized by law other than this
187 Chapter.

188 § 39A-206. NOTICE OF PROCEEDING. If a petition for the appointment of a guardian or issuance of a
189 protective order is brought in this State and this State was not the respondent's Home state on the date the petition was
190 filed, in addition to complying with the notice requirements of this State, notice of the petition must be given to those
191 persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's Home state. The
192 notice must be given in the same manner as notice is required to be given in this State.

193 § 39A-207. PROCEEDINGS IN MORE THAN ONE STATE. Except for a petition for the appointment of a
194 guardian in an emergency or issuance of a protective order limited to property located in this State under Section 202(a)(1)
195 or (a)(2), if a petition for the appointment of a guardian or issuance of a protective order is filed in this State and in another
196 state and neither petition has been dismissed or withdrawn, the following rules apply:

- 197 (1) If the Court has jurisdiction under Section 201, it may proceed with the case unless a
- 198 court in another state acquires jurisdiction under provisions similar to Section 201 before
- 199 the appointment or issuance of the order.
- 200 (2) If the Court does not have jurisdiction under Section 201, whether at the time the petition

201 is filed or at any time before the appointment or issuance of the order, the Court shall stay
202 the proceeding and communicate with the court in the other state. If the court in the other
203 state has jurisdiction, the court in this State shall dismiss the petition unless the court in
204 the other state determines that the court in this State is a more appropriate forum.

205 § 39A-301. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE.

206 (a) A guardian or conservator appointed in this State may petition the Court to transfer the
207 guardianship or conservatorship to another state.

208 (b) Notice of a petition under subsection (a) must be given to the persons that would be entitled to
209 notice of a petition in this State for the appointment of a guardian or conservator.

210 (c) On the Court's own motion or on request of the guardian or conservator, the incapacitated or
211 protected person, or other person required to be notified of the petition, the Court shall hold a hearing on a petition filed
212 pursuant to subsection (a).

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

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

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

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

223 (e) The Court shall issue a provisional order granting a petition to transfer a conservatorship and shall
224 direct the conservator to petition for conservatorship in the other state if the Court is satisfied that the conservatorship will
225 be accepted by the court of the other state and the Court finds that:

226 (1) The protected person is physically present in or is reasonably expected to move permanently
227 to the other state, or the protected person has a significant connection to the other state
228 considering the factors in Section 201(b);

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

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

233 (f) The Court shall issue a final order confirming the transfer and terminating the guardianship or
234 conservatorship upon its receipt of:

235 (1) A provisional order accepting the proceeding from the court to which the proceeding is to be
236 transferred which is issued under provisions similar to Section 302; and

237 (2) The documents required to terminate a guardianship or conservatorship in this State.

238 § 39A-302. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER
239 STATE.

240 (a) To confirm transfer of a guardianship or conservatorship transferred to this State under provisions
241 similar to Section 301, the guardian or conservator must petition the court in this State to accept the guardianship or
242 conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

243 (b) Notice of a petition under subsection (a) must be given to those persons that would be entitled to
244 notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the
245 transferring state and this State. The notice must be given in the same manner as notice is required to be given in this State.

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

249 (d) The Court shall issue an order provisionally granting a petition filed under subsection (a) unless:

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

252 (2) The guardian or conservator is ineligible for appointment in this State.

253 (e) The Court shall issue a final order accepting the proceeding and appointing the guardian or
254 conservator as guardian or conservator in this State upon its receipt from the court from which the proceeding is being
255 transferred of a final order issued under provisions similar to Section 301 transferring the proceeding to this State.

256 (f) Not later than 90 days after issuance of a final order accepting transfer of a guardianship or
257 conservatorship, the Court shall determine whether the guardianship or conservatorship needs to be modified to conform to
258 the law of this State.

259 (g) In granting a petition under this section, the Court shall recognize a guardianship or
260 conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity
261 and the appointment of the guardian or conservator.

262 (h) The denial by the Court of a petition to accept a guardianship or conservatorship transferred from
263 another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this
264 State under Chapters 39 and 41 of Title 12 if the Court has jurisdiction to make an appointment other than by reason of the
265 provisional order of transfer.

266 § 39A-401. FOREIGN GUARDIANS. The authority of a guardian or conservator appointed in another state to act
267 in this state is governed by Section 3904 of Title 12 of the Delaware Code.

268 § 39A-402. EFFECTIVE DATE. Chapter 39A applies to guardianship and protective proceedings begun on or
269 after January 1, 2009.”

SYNOPSIS

Because the United States has 50 plus guardianship systems, problems of determining jurisdiction are frequent. Questions of which state has jurisdiction to appoint a guardian or conservator can arise between an American state and another country. But more frequently, problems arise because the individual has contacts with more than one American state. In nearly all American states, a guardian may be appointed by a court in a state in which the individual is domiciled or is physically present.

In nearly all American states, a conservator may be appointed by a court in a state in which the individual is domiciled or has property. Contested cases in which courts in more than one state have jurisdiction are becoming more frequent. Sometimes these cases arise because the adult is physically located in a state other than the adult's domicile. Sometimes the case arises because of uncertainty as to the adult's domicile, particularly if the adult owns a second home in another state. There is a need for an effective mechanism for resolving multi-jurisdictional disputes.

Accordingly, this bill would modify Chapter 39 of Title 12 and create a new Chapter 39A that would enact a modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, which facilitates the movement of adult guardianships, conservatorships, and other protective proceedings between Delaware and other states by providing procedures for communication and cooperation between the Court of Chancery and courts of other states, procedures for resolving multi-jurisdictional disputes, procedures for transferring guardianships and conservatorships between Delaware and other states, and procedures under which a guardianship or other protective order issued in another state may be registered in Delaware.

Author: Senator Blevins