

AMENDMENT # 2

OFFERED IN THE SENATE  
TO: SB 190

BY SENATOR Kiehl

1 Page 13, line 19:

2 Delete "AS 13.29.325(b)(2), 13.29.330(c)(2) or (d),"

3 Insert "AS 13.29.333"

4

5 Page 13, line 25:

6 Delete "AS 13.29.325(b)(2), 13.29.330(c)(2) or (d), or"

7 Insert "AS 13.29.333,"

8

9 Page 104, line 28, following "person;":

10 Insert "and"

11

12 Page 104, lines 29 - 30:

13 Delete all material.

14

15 Renumber the following paragraph accordingly.

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17 Page 106, line 14:

18 Delete "(1)"

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20 Page 106, line 16:

21 Delete "(A)"

22 Insert "(1)"

23

- 1 Page 106, line 17:
  - 2 Delete "(B)"
  - 3 Insert "(2)"
  - 4
- 5 Page 106, line 19:
  - 6 Delete "(C)"
  - 7 Insert "(3)"
  - 8
- 9 Page 106, line 20:
  - 10 Delete "(D)"
  - 11 Insert "(4)"
  - 12
- 13 Page 106, line 21:
  - 14 Delete "(E)"
  - 15 Insert "(5)"
  - 16
- 17 Page 106, line 24:
  - 18 Delete "(F)"
  - 19 Insert "(6)"
  - 20
- 21 Page 106, line 25:
  - 22 Delete "(G)"
  - 23 Insert "(7)"
  - 24
- 25 Page 106, line 28:
  - 26 Delete "(H)"
  - 27 Insert "(8)"
  - 28 Delete "; or"
  - 29 Insert "."
  - 30
- 31 Page 106, line 29, through page 107, line 9:

1 Delete all material.

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3 Reletter the following subsection accordingly.

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5 Page 107, line 10:

6 Delete "or (d)"

7

8 Page 107, following line 15:

9 Insert a new section to read:

10 **"Sec. 13.29.333. Basis for protective arrangement restricting access to an**  
11 **individual or individual's property.** (a) A protective arrangement ordered under this  
12 section may

13 (1) make any order under AS 13.29.170;

14 (2) supersede an existing power of attorney;

15 (3) prohibit a person's access to the respondent; or

16 (4) prohibit a person's use of or access to the respondent's property.

17 (b) A person who is allowed to file a petition under AS 13.29.320 may file a  
18 petition for an ex parte protective arrangement against another person to restrict the  
19 other person's access to the respondent or respondent's property. The court shall ex  
20 parte and without notice to the person to be restricted issue an ex parte protective  
21 arrangement within the scope of (a) of this section if the court finds probable cause  
22 that the person to be restricted is financially defrauding the respondent and that there  
23 has been or is an immediate threat of a waste or dissipation of the respondent's funds  
24 or other property because of the fraud.

25 (c) An ex parte protective arrangement expires 20 days after the order is  
26 issued, unless

27 (1) dissolved earlier by the court at the request of the individual subject  
28 to an ex parte protective arrangement or the restricted person after notice and, if  
29 requested, a hearing; or

30 (2) a guardian or conservator is appointed to the individual subject to  
31 an ex parte protective arrangement earlier.

1 (d) Upon the filing of a petition with the court before the expiration of an ex  
2 parte protective arrangement, the court shall schedule a hearing on whether to convert  
3 the ex parte protective arrangement to a protective arrangement instead of  
4 guardianship or conservatorship under (e) of this section. The court shall provide the  
5 petitioner, respondent, and the person to be restricted at least 10 days' notice of the  
6 hearing and notice of the information required under AS 13.29.340(d).

7 (e) After a hearing on a petition under (d) of this section or AS 13.29.065,  
8 13.29.160, or 13.29.320(a)(2), (b), or (c), the court shall issue a protective  
9 arrangement instead of guardianship or conservatorship within the scope of (a) of this  
10 section if the court finds by a preponderance of the evidence that the person to be  
11 restricted has committed fraud against the respondent.

12 (f) The petitioner, individual subject to the protective arrangement, or  
13 restricted person may request to modify a protective arrangement issued under (b) or  
14 (e) of this section. Except as provided in (g) of this section, if a request is made to  
15 modify

16 (1) an ex parte protective arrangement, the court shall schedule a  
17 hearing on three days' notice or on shorter notice as the court may prescribe; or

18 (2) a protective arrangement instead of guardianship or  
19 conservatorship issued under (e) of this section, the court shall schedule a hearing  
20 within 20 days after the date the request is made, except that, if the court finds that the  
21 request is meritless on its face, the court may deny the request without a hearing.

22 (g) If a request to modify is made under (f) of this section and the request  
23 raises an issue not raised in the petition for the protective arrangement, the court may  
24 allow a party additional time to respond.

25 (h) If the court modifies a protective arrangement under (f) of this section, the  
26 court shall issue a modified protective arrangement and make reasonable efforts to  
27 ensure that the order is understood by the petitioner, individual subject to the  
28 protective arrangement, or restricted person.

29 (i) The court shall cause a copy of a protective arrangement issued under (b)  
30 or (e) of this section and any related orders to be delivered to the appropriate local law  
31 enforcement agency for expedited entry in the central registry under AS 18.65.540.

1 (j) A protective arrangement issued under (b) or (e) of this section against a  
2 restricted person is in addition to any other civil or criminal remedy.

3 (k) A third party that has received actual or legal notice of a protective  
4 arrangement issued under (b) or (e) of this section shall comply with the order. A third  
5 party who does not comply with the protective arrangement may be liable in a civil  
6 action to the individual subject to the protective arrangement or individual subject to  
7 the protective arrangement's heirs, assigns, or estate for a civil penalty not to exceed  
8 \$1,000, plus the actual damages, costs, and fees associated with the failure to comply  
9 with the protective arrangement. A third party who does not comply with the  
10 protective arrangement may also be criminally liable under AS 11.56.740 for violating  
11 a protective order. In this subsection, "actual or legal notice" means delivery by mail  
12 or facsimile at the most recently known place of residence or business of the third  
13 party.

14 (l) The Alaska Court System, after consulting with the Department of Health,  
15 the office of public advocacy, the office of elder fraud and assistance, the long term  
16 care ombudsman, and other interested persons and organizations, shall prepare forms  
17 for petitions and protective arrangements and instructions for use of the forms by a  
18 person seeking a protective arrangement under (b) or (e) of this section or to modify a  
19 protective arrangement under (f) of this section. The forms must conform to the  
20 Alaska Rules of Probate Procedure and Alaska Rules of Civil Procedure, except that  
21 information on the forms may be filled in by legible handwriting. The office of the  
22 clerk of each superior and district court shall make available to the public the forms  
23 and instructions for the use of the forms prepared under this subsection. The clerk  
24 shall provide assistance in completing and filing the forms.

25 (m) Filing fees may not be charged for a petition that requests the issuance of  
26 a protective arrangement under (b) or (e) of this section or that requests to modify the  
27 protective arrangement under (f) of this section.

28 (n) In this section,

29 (1) "fraud" means

30 (A) robbery, extortion, and coercion under AS 11.41.500 -  
31 11.41.530;

1 (B) offenses against property under AS 11.46.100 - 11.46.740;

2 or

3 (C) exploitation of another person or another person's resources  
4 for personal profit or advantage if no significant benefit accrues to the person  
5 who is exploited;

6 (2) "individual subject to an ex parte protective arrangement" means an  
7 adult or minor for whose benefit an ex parte protective arrangement has been ordered;

8 (3) "restricted person" means a person restricted from accessing an  
9 individual or individual's property by a protective arrangement issued under (b) or (e)  
10 of this section."

11

12 Page 107, line 16:

13 Delete "a"

14 Insert "an ex parte protective arrangement or"

15

16 Page 109, lines 16 - 17:

17 Delete all material and insert:

18 "(6) if an ex parte protective arrangement or protective arrangement  
19 instead of guardianship or conservatorship under AS 13.29.333 is sought, the name  
20 and current address, if known, of any person with whom the petitioner seeks to restrict  
21 access to the respondent or respondent's property;"

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23 Page 109, line 30, following "AS 13.29.320":

24 Insert "or 13.29.333"

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26 Page 109, line 31, following "AS 13.29.320":

27 Insert "or 13.29.333"

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29 Page 110, line 5, following "respondent":

30 Insert "unless service would cause an immediate threat of harm to the best interests of  
31 the respondent and the petition includes a written explanation of the harm"

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Page 110, line 6, following "AS 13.29.320":

Insert "or 13.29.333"

Page 110, following line 10:

Insert a new subsection to read:

"(d) In a proceeding for a protective arrangement instead of guardianship or conservatorship under AS 13.29.333(e), the notice required under (b) of this section must be given to each person whose access to the respondent or respondent's property the petitioner seeks to restrict. The court may not grant the petition if notice substantially complying with this subsection is not served on each person."

Reletter the following subsection accordingly.

Page 110, line 16, following "AS 13.29.320":

Insert "or 13.29.333"

Page 110, line 19, following "AS 13.29.320":

Insert "or 13.29.333"

Page 110, line 23, following "AS 13.29.320":

Insert "or 13.29.333"

Page 114, line 3:

Delete "or"

Page 114, line 5, following "minor":

Insert "; or

(4) the respondent is not in attendance because notice was not served under AS 13.29.340(b) and service would have caused an immediate threat of harm to the best interests of the respondent"

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Page 114, line 21:

Delete "instead of guardianship or conservatorship"

Insert "under AS 13.29.320 - 13.29.375"

Page 114, line 22, following "individual":

Insert "or individual's property"

Page 114, lines 24 - 25:

Delete "instead of guardianship or conservatorship"

Insert "under AS 13.29.320 - 13.29.375"

Page 115, lines 3 - 4:

Delete "instead of guardianship or conservatorship"

Insert "under AS 13.29.320 - 13.29.375"

Page 120, lines 7 - 11:

Delete "that the court finds (1) through fraud, coercion, duress, or the use of deception and control, caused, or attempted to cause, an action that would have resulted in financial harm to the individual or the individual's property; and (2) poses a serious risk of substantial financial harm to the individual or the individual's property"

Insert "if the court finds that the person has committed fraud against the individual"

Page 145, following line 5:

Insert a new paragraph to read:

"(6) "ex parte protective arrangement" means a court order entered under AS 13.29.333(b);"

Renumber the following paragraphs accordingly.

Page 145, line 26, following "AS 13.29.330":

1           Insert "or 13.29.333(e)"

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3   Page 145, line 28, following "AS 13.29.325":

4           Insert "or 13.29.333(e)"

5

6   Page 145, line 30:

7           Delete "or 13.29.330"

8           Insert ", 13.29.330, or 13.29.333"

9

10   Page 146, lines 3 - 5:

11           Delete all material.

12

13   Renumber the following paragraphs accordingly.

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15   Page 147, line 23, following "conservator":

16           Insert ", an ex parte protective arrangement,"

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18   Page 152, lines 6 - 7:

19           Delete "AS 13.29.325(b)(2), 13.29.330(c)(2) or (d)"

20           Insert "AS 13.29.333"

21

22   Page 152, line 14:

23           Delete "AS 13.29.325(b)(2), 13.29.330(c)(2) or (d)"

24           Insert "AS 13.29.333"

25

26   Page 160, line 13:

27           Delete "AS 13.29.325(b)(2) or 13.29.330(c)(2) or (d)"

28           Insert "AS 13.29.333"