

HOUSE BILL NO. 427

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE ANDERSON

Introduced: 2/4/04

Referred: Health, Education and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to guardianships and conservatorships, to the public guardian and the**
2 **office of public advocacy, to private professional guardians and private professional**
3 **conservators, to court visitors, court-appointed attorneys, guardians ad litem, and**
4 **fiduciaries, and to the protection of the person or property of certain individuals,**
5 **including minors; amending Rules 16(f) and 17(e), Alaska Rules of Probate Procedure;**
6 **and providing for an effective date."**

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 *** Section 1.** AS 13.26 is amended by adding a new section to article 1 to read:

9 **Sec. 13.26.001. Adoption of standards of practice.** It is the policy of the
10 state that all guardians and conservators, when making decisions for their wards or
11 protected persons, shall abide by the highest ethical standards of decision making and
12 shall consider the standards of practice adopted by the division by regulation. Before
13 adopting the regulations, the department shall review the standards of practice adopted

1 by a national organization with expertise in the area of standards of practice for
2 guardians and conservators, such as the National Guardianship Foundation.

3 * **Sec. 2.** AS 13.26.005 is amended by adding new paragraphs to read:

4 (11) "division" means the division of occupational licensing in the
5 Department of Community and Economic Development;

6 (12) "private professional conservator" means a person, other than the
7 public guardian, who has been appointed as a conservator under AS 13.26.165 -
8 13.26.320 in more than two cases and who receives compensation for acting in that
9 capacity;

10 (13) "private professional guardian" means a person, other than the
11 public guardian, who has been appointed as a guardian under AS 13.26.030 -
12 13.26.155 in more than two cases and who receives compensation for acting in that
13 capacity.

14 * **Sec. 3.** AS 13.26.013(a) is amended to read:

15 (a) A notice of the filing of a petition, a summary of all formal proceedings,
16 and a dispositional order or modification or termination of a dispositional order
17 relating to a proceeding under this chapter shall be available for public inspection. All
18 other information contained in the court records relating to a proceeding under this
19 chapter is confidential and available only upon court order for good cause shown or to
20 the following persons:

21 (1) the person who is the subject of the court record, the person's
22 attorney, or the person's guardian ad litem;

23 (2) a person designated by the person who is the subject of the court
24 record;

25 (3) the guardian of the person who is the subject of the court record or
26 the attorney of the guardian;

27 (4) the conservator of the estate of the person who is the subject of the
28 court record or the attorney of the conservator;

29 (5) a party to the proceeding and the person's attorney;

30 (6) the judge or judges hearing or reviewing the matter; [AND]

31 (7) a member of the clerical or administrative staff of the court if

1 access is essential for authorized internal administrative purposes; **and**

2 **(8) the division when a private professional guardian or a private**
 3 **professional conservator is involved in the proceeding.**

4 * **Sec. 4.** AS 13.26 is amended by adding a new section to article 1 to read:

5 **Sec. 13.26.025. Appointment of a guardian ad litem.** (a) Upon the request
 6 of a ward, protected person, or respondent, or the attorney of a ward, protected person,
 7 or respondent, the court shall appoint a guardian ad litem to protect the rights of the
 8 ward, protected person, or respondent in proceedings under AS 13.26.090 - 13.26.320.
 9 The court shall make the appointment if the court is satisfied that, because of impaired
 10 ability effectively to receive and evaluate information regarding the proceedings or
 11 because of impaired ability to communicate decisions regarding the proceedings, the
 12 ward, protected person, or respondent cannot determine the ward's, protected person's,
 13 or respondent's own interests without assistance, and

14 (1) a guardian or conservator has not been appointed;

15 (2) the interests of the ward, protected person, or respondent conflict
 16 with those of the ward's, protected person's, or respondent's guardian or conservator;
 17 or

18 (3) the appointment is otherwise in the interests of justice.

19 (b) A person appointed may act as a guardian ad litem for a ward, protected
 20 person, or respondent if the court determines that the appointment is appropriate under
 21 the standards set out in (a) of this section and another party whose interests would not
 22 conflict with those of the ward, protected person, or respondent is not readily available
 23 and able to serve as the guardian ad litem. When a person who has been appointed by
 24 the court as the attorney for the ward, protected person, or respondent is appointed to
 25 act as the guardian ad litem for the ward, protected person, or respondent, the
 26 appointment of the person as the attorney ends, and the person appointed as the
 27 guardian ad litem shall act exclusively as a guardian ad litem for the ward, protected
 28 person, or respondent. Nothing in this subsection is intended to impinge on the right
 29 of a ward, protected person, or respondent to have an attorney.

30 (c) The guardian ad litem shall assist the ward, protected person, or respondent
 31 in determining the ward's, protected person's, or respondent's interests in regard to the

1 legal proceedings that involve the ward, protected person, or respondent. If the ward,
 2 protected person, or respondent is entirely incapable of determining those interests, the
 3 guardian ad litem shall make that determination and advise the court and counsel for
 4 all parties accordingly. The guardian ad litem shall

5 (1) inquire thoroughly into all the circumstances that a prudent ward,
 6 protected person, or respondent would consider in determining the ward's, protected
 7 person's, or respondent's own interests in the proceedings; and

8 (2) encourage the ward, protected person, or respondent to participate,
 9 to the maximum extent possible, in all decisions and to act on the ward's, protected
 10 person's, or respondent's own behalf on all matters in which the ward, protected
 11 person, or respondent is able.

12 (d) The attorney for the ward, protected person, or respondent may also be the
 13 guardian ad litem for the ward, protected person, or respondent if there is no other
 14 party readily available and able to serve as a guardian ad litem and whose interests
 15 would not conflict with those of the ward, protected person, or respondent.

16 (e) The office of public advocacy shall provide guardian ad litem services to
 17 persons who would suffer financial hardship or become dependent upon a government
 18 agency or a private person or agency if the services were not to be provided at state
 19 expense.

20 * **Sec. 5.** AS 13.26.111(b) is amended to read:

21 (b) To the maximum extent possible, the ward or respondent shall remain
 22 responsible for determining the interests of the ward or respondent. However, the
 23 attorney for the ward or respondent may seek appointment of a guardian ad litem if the
 24 circumstances of AS 13.26.025 [AS 13.26.112] apply.

25 * **Sec. 6.** AS 13.26.117 is amended to read:

26 **Sec. 13.26.117. Guardianship implementation report.** Within 90 days after
 27 distribution of the order of appointment as guardian, the guardian shall submit to the
 28 court a report. The report must describe the guardian's program for implementing the
 29 guardianship plan. The primary goal of the program described in the report must be,
 30 to the maximum extent possible, to develop or regain the ward's abilities to handle the
 31 ward's own affairs. The report must consider housing, medical care, and educational

1 and vocational needs and resources. In developing the report, the guardian shall
 2 consult with the ward to the maximum extent possible. [THE OFFICE OF PUBLIC
 3 GUARDIAN SHALL CONTACT THE GUARDIAN TO OFFER ASSISTANCE IN
 4 PREPARING THE REPORT.] The report must specify the services that are necessary
 5 to meet the essential requirements for the ward's physical health or safety and the
 6 means for obtaining the services. The report must specify the manner in which the
 7 guardian will exercise and share decision-making authority and other items that will
 8 assist in fulfilling the needs of the ward, the terms of the guardianship order, and the
 9 duties of the guardian.

10 * **Sec. 7.** AS 13.26.118 is amended to read:

11 (a) A guardian shall submit a report to the court [OR REQUEST THAT A
 12 VISITOR BE APPOINTED TO PREPARE AND SUBMIT A REPORT] at least
 13 annually. **In addition, every third year, the court shall appoint a visitor to file a**
 14 **report reviewing the guardianship during the period since the last visitor's**
 15 **report, if any** [A COURT-APPOINTED VISITOR SHALL PREPARE THE
 16 REPORT AT LEAST ONCE IN EACH THREE-YEAR PERIOD]. The guardian
 17 shall submit an additional report to the court when

18 (1) the court orders it;

19 (2) there is a significant change in the capacity of the ward to meet the
 20 essential requirements for health and safety or to protect the ward's rights;

21 (3) the guardian resigns or is removed;

22 (4) the guardianship is terminated; or

23 (5) the ward requests it.

24 (b) The report **of the guardian** must contain, but is not limited to, the
 25 following information:

26 (1) the name and address of the ward and the guardian;

27 (2) the ward's present mental, physical, and social conditions and
 28 present living arrangements and the ward's opinion of these arrangements;

29 (3) changes in the capacity of the ward to meet essential requirements
 30 for physical health and safety;

31 (4) the services being provided to the ward;

1 (5) the significant actions taken by the guardian during the reporting
2 period in regard to the ward;

3 (6) a financial accounting of the estate that has been subject to the
4 possession or control of the guardian;

5 (7) a list of the number and nature of the contacts between the guardian
6 and ward if the ward does not reside with the guardian;

7 (8) any other information requested by the court or necessary or
8 desirable in the opinion of the guardian [OR VISITOR].

9 * **Sec. 8.** AS 13.26.118 is amended by adding a new subsection to read:

10 (c) The visitor report required by (a) of this section must include

11 (1) the name and address of the ward and the guardian;

12 (2) the services being provided to the ward by or through the guardian;

13 (3) the significant actions taken by the guardian during the reporting
14 period in regard to the ward;

15 (4) a financial accounting of the estate that has been subject to the
16 possession or control of the guardian;

17 (5) a list of the number and nature of the contacts between the
18 conservator and the ward if the ward does not reside with the guardian;

19 (6) any other information requested by the court or necessary or
20 desirable in the opinion of the visitor.

21 * **Sec. 9.** AS 13.26.120 is amended by adding a new subsection to read:

22 (b) Notwithstanding (a) of this section, if a deceased ward does not have a
23 living family member or if an individual interested in the ward is not available, the
24 guardian of a ward who dies may arrange for the body of the ward to be transported to
25 a funeral home and may make funeral and burial arrangements for the deceased ward.
26 The guardian may also apply for assistance with burial expenses from the state or a
27 municipality if the estate of the ward does not have sufficient money to pay for burial.

28 * **Sec. 10.** AS 13.26.125(a) is amended to read:

29 (a) On petition of the ward, the guardian, or any person interested in the
30 ward's welfare, **or on the court's own motion,** the court may (1) review and amend a
31 decision of a guardian; or (2) if alternatives that are less restrictive than guardianship

1 or less restrictive than the existing guardianship plan would assist the ward in meeting
 2 essential requirements for physical health and safety, modify the provisions of its
 3 order to (A) amend the guardianship plan or the responsibilities of the guardian; (B)
 4 remove a guardian and appoint a successor; or (C) terminate the guardianship. On
 5 petition of the guardian, the court may accept a resignation and make any other order
 6 that may be appropriate.

7 * **Sec. 11.** AS 13.26.131(b) is amended to read:

8 (b) Subject to (c) and (d) of this section, the respondent shall bear the costs of
 9 the attorney appointed under AS 13.26.106(b), of the expert appointed under
 10 AS 13.26.109(d), of the guardian ad litem appointed under **AS 13.26.025**
 11 [AS 13.26.112], and of other court and guardianship costs incurred under this chapter.

12 * **Sec. 12.** AS 13.26.145(a) is amended to read:

13 (a) The court may appoint a competent person, **including a private**
 14 **professional guardian, or** the public guardian, [OR A PRIVATE ASSOCIATION
 15 OR NONPROFIT CORPORATION WITH A GUARDIANSHIP PROGRAM FOR
 16 INCAPACITATED PERSONS,] as **the** guardian of an incapacitated person.

17 * **Sec. 13.** AS 13.26.145(c) is amended to read:

18 (c) A person may be appointed as the guardian of an incapacitated person
 19 notwithstanding the provisions of (b) of this section if the person is the spouse, adult
 20 child, parent, or sibling of the incapacitated person and the court determines that the
 21 potential conflict of interest is insubstantial and that the appointment would clearly be
 22 in the best interests of the incapacitated person. **When appointing a relative or**
 23 **friend of the incapacitated person as the guardian of an incapacitated person, the**
 24 **court shall require that the proposed guardian complete one hour of mandatory**
 25 **education on the basics of guardianship before the appointment or within 30 days**
 26 **after the appointment.**

27 * **Sec. 14.** AS 13.26.145(d) is amended to read:

28 (d) Subject to (e) of this section, qualified persons have priority for
 29 appointment as guardian in the following order:

30 (1) **an individual** [A PERSON, ASSOCIATION,] or **organization**
 31 [PRIVATE NONPROFIT CORPORATION] nominated by the incapacitated person

1 [.] if, at the time of the nomination, the incapacitated person **has, in the opinion of the**
 2 **court, sufficient mental** [HAD THE] capacity to make **an informed** [A
 3 REASONABLY INTELLIGENT] choice;

4 (2) the spouse of the incapacitated person;

5 (3) an adult child or parent of the incapacitated person;

6 (4) a relative of the incapacitated person with whom the incapacitated
 7 person has resided for more than six months during the year before the filing of the
 8 petition;

9 (5) a relative or friend who has demonstrated a sincere, longstanding
 10 interest in the welfare of the incapacitated person;

11 (6) a private **professional guardian** [ASSOCIATION OR
 12 NONPROFIT CORPORATION WITH A GUARDIANSHIP PROGRAM FOR
 13 INCAPACITATED PERSONS];

14 (7) the public guardian.

15 * **Sec. 15.** AS 13.26.145(e) is amended to read:

16 (e) The priorities established in (d) of this section are not binding, and the
 17 court shall select the **individual** [PERSON, ASSOCIATION,] or **organization**
 18 [NONPROFIT CORPORATION] that is best qualified and willing to serve. The court
 19 shall also **consider** [GIVE CONSIDERATION TO] a nomination by a person
 20 described in (d) of this section and to a nomination in the will of a deceased parent or
 21 spouse of the incapacitated person.

22 * **Sec. 16.** AS 13.26.150(c) is amended to read:

23 (c) A full guardian of an incapacitated person has the same powers and duties
 24 respecting the ward that a parent has respecting an unemancipated minor child except
 25 that the guardian is not liable for the care and maintenance of the ward and is not
 26 liable, solely by reason of the guardianship, to a person who is harmed by acts of the
 27 ward. Except as modified by order of the court, a full guardian's powers and duties
 28 include, but are not limited to, the following:

29 (1) the guardian is entitled to custody of the person of the ward and
 30 shall assure that the ward has a place of abode in the least restrictive setting consistent
 31 with the essential requirements for the ward's physical health and safety;

1 (2) the guardian shall assure the care, comfort, and maintenance of the
2 ward;

3 (3) the guardian shall assure that the ward receives the services
4 necessary to meet the essential requirements for the ward's physical health and safety
5 and to develop or regain, to the maximum extent possible, the capacity to meet the
6 ward's needs for physical health and safety;

7 (4) the guardian shall assure through the initiation of court action and
8 other means that the ward enjoys all personal, civil, and human rights to which the
9 ward is entitled;

10 (5) the guardian may give consents or approvals necessary to enable
11 the ward to receive medical or other professional care, counsel, treatment, or services
12 except as otherwise limited by (e) of this section;

13 (6) **the guardian has the powers** [IF A CONSERVATOR FOR THE
14 ESTATE OF THE WARD HAS NOT BEEN APPOINTED, THE GUARDIAN MAY
15 RECEIVE MONEY] and **duties of a conservator under this chapter** [PROPERTY
16 DELIVERABLE TO THE WARD AND APPLY THE MONEY AND PROPERTY
17 FOR SUPPORT, CARE, AND EDUCATION OF THE WARD]; however, the
18 guardian may not apply the ward's money or property for the services as guardian or
19 for room and board that the guardian[,] or the guardian's spouse, parent, or child has
20 furnished the ward unless, before payment, the court finds that the ward is financially
21 able to pay and that the charge is reasonable; notice of a request for payment approval
22 shall be provided to at least one relative of the ward if possible; the guardian shall
23 exercise care to conserve any excess money or property for the ward's needs;

24 (7) if a conservator of the estate of the ward has **also** been appointed,
25 the guardian shall pay all of the ward's estate received by the guardian [IN EXCESS
26 OF THE MONEY EXPENDED TO MEET CURRENT EXPENSES FOR SUPPORT,
27 CARE, AND EDUCATION OF THE WARD,] to the conservator for management as
28 provided in AS 13.26.165 - 13.26.315 [, AND THE GUARDIAN SHALL
29 ACCOUNT TO THE CONSERVATOR FOR MONEY EXPENDED].

30 * **Sec. 17.** AS 13.26.195(b) is amended to read:

31 (b) Upon receipt of a petition for appointment of a conservator or other

1 protective order for reasons other than minority, the court shall set a date for hearing.
 2 Unless the person to be protected has counsel of the person's own choice, the court
 3 must appoint a lawyer to represent the person [WHO THEN HAS THE POWERS
 4 AND DUTIES OF A GUARDIAN AD LITEM]. If the alleged disability is mental
 5 illness, mental deficiency, physical illness or disability, advanced age, chronic use of
 6 drugs, or chronic intoxication, the court may direct that the person to be protected be
 7 examined by a physician designated by the court, preferably a physician who is not
 8 connected with any institution in which the person is a patient or is detained. The
 9 court may send a visitor to interview the person to be protected. The visitor may be a
 10 guardian ad litem or an officer or employee of the court.

11 * **Sec. 18.** AS 13.26.210 is repealed and reenacted to read:

12 **Sec. 13.26.210. Who may be appointed conservator; priorities.** (a) The
 13 court may appoint a competent person, including a private professional guardian or the
 14 public guardian, as the conservator of the estate of a protected person.

15 (b) The court may not appoint a person to be a conservator of a protected
 16 person if the person

17 (1) provides, or is likely to provide during the conservatorship,
 18 substantial services to the protected person in a professional or business capacity,
 19 other than in the capacity of conservator;

20 (2) is or is likely to become, during the conservatorship, a creditor of
 21 the protected person, other than in the capacity of conservator;

22 (3) is likely to have, during the conservatorship, interests that may
 23 conflict with those of the protected person; or

24 (4) is employed by a person who would be disqualified under (1) - (3)
 25 of this subsection.

26 (c) A person may be appointed as the conservator of a protected person even if
 27 (b) of this section applies if the person is the spouse, adult child, parent, or sibling of
 28 the protected person and if the court determines that the potential conflict of interest is
 29 not substantial and that the appointment would clearly be in the best interests of the
 30 protected person.

31 (d) Subject to (c) of this section, qualified persons have priority for

1 appointment in the following order:

2 (1) an individual or qualified conservator nominated by the protected
3 person if the protected person is 14 or more years of age and has, in the opinion of the
4 court, sufficient mental capacity to make an informed choice;

5 (2) the spouse of the protected person;

6 (3) an adult child or a parent of the protected person;

7 (4) a relative of the protected person with whom the protected person
8 has resided for more than six months during the year before the filing of the petition;

9 (5) a relative or friend of the protected person who has demonstrated a
10 sincere and longstanding interest in the welfare of the protected person;

11 (6) a private professional conservator;

12 (7) the public guardian.

13 (e) Notwithstanding (d) of this section, the court shall select the person that is
14 the best qualified of those persons who are willing to serve as the conservator. The
15 court shall also consider a nomination by a person described in (d) of this section and
16 a nomination in the will of a deceased parent or spouse of the protected person.

17 (f) In addition to any other requirement of this section, when appointing a
18 relative or friend of the incapacitated person as the conservator of a protected person,
19 the court shall require that the proposed conservator complete one hour of mandatory
20 education on the basics of conservatorship before the appointment or within 30 days
21 after the appointment. If the person is appointed based on the person's agreement to
22 complete the mandatory education and the person fails to complete the mandatory
23 education within the 30 days, the court shall remove the conservator and appoint a
24 successor.

25 * **Sec. 19.** AS 13.26.250 is amended to read:

26 **Sec. 13.26.250. Inventory, implementation report, and records.** Within 90
27 days after **distribution of the order of** appointment, every conservator shall prepare
28 and file with the appointing court a **conservator implementation report and a**
29 complete inventory of the estate of the protected person together with an oath or
30 affirmation that it is complete and accurate so far as the conservator is informed. The
31 conservator shall provide a copy of it to the protected person if the protected person

1 can be located, has attained the age of 14 years, and has sufficient mental capacity to
 2 understand these matters, and to any parent or guardian with whom the protected
 3 person resides. The conservator shall keep suitable records of the administration and
 4 exhibit them on request of any interested person.

5 * **Sec. 20.** AS 13.26.255 is amended to read:

6 **Sec. 13.26.255. Accounts.** **A conservator shall submit a report to the court**
 7 **at least every year. In addition, a** [EVERY] conservator **shall** [MUST] account to
 8 the court for administration of the trust upon resignation or removal [,] and at other
 9 times as the court may direct. On termination of the protected person's minority or
 10 disability, a conservator may account to the court or to the former protected person or
 11 the protected person's personal representative. Subject to appeal or vacation within
 12 the time permitted, an order, made upon notice and hearing, allowing an intermediate
 13 account of a conservator, adjudicates as to the conservator's liabilities concerning the
 14 matters considered in connection with it; and an order, made upon notice and hearing,
 15 allowing a final account, adjudicates as to all previously unsettled liabilities of the
 16 conservator to the protected person or the protected person's successors relating to the
 17 conservatorship. In connection with any account, the court may require a conservator
 18 to submit to a physical check of the estate in the conservator's control, to be made in
 19 any manner the court may specify.

20 * **Sec. 21.** AS 13.26 is amended by adding a new section to read:

21 **Sec. 13.26.257. Visitor reports.** (a) The initial visitor report of a visitor
 22 appointed under AS 13.26.195(b) must include

23 (1) the results and analyses of medical and other tests and
 24 examinations performed that describe the proposed protected person's mental,
 25 emotional, physical, and educational condition, adaptive behavior, and social skills,
 26 and that specify the data on which the description is based;

27 (2) recommendations regarding the types and extent of assistance, if
 28 any, necessary to meet the essential requirements for managing the property and
 29 affairs of the proposed protected person;

30 (3) an evaluation of the proposed protected person's need for mental
 31 health treatment and whether there is a substantial probability that available treatment

1 will significantly improve the proposed protected person's mental condition;

2 (4) an evaluation of the proposed protected person's need for
3 educational or vocational assistance and whether the assistance can be made available
4 to the protected person;

5 (5) an evaluation of the probability that the incapacity may
6 significantly lessen, and the type of services or treatment that will facilitate
7 improvement in the condition or skills of the proposed protected person;

8 (6) a list of the names and addresses of all individuals who examined,
9 interviewed, or investigated the proposed protected person, and the names and
10 addresses of all persons contacted in preparation of the visitor report;

11 (7) a summary of the information that

12 (A) was supplied by the person described in (6) of this
13 subsection; and

14 (B) supports the conclusions of the visitor report;

15 (8) a description of the alternatives to conservatorship that were
16 considered and not recommended and an explanation of why they are not feasible to
17 meet the needs of the proposed protected person;

18 (9) a specification of the financial resources of the proposed protected
19 person, the proposed protected person's entitlements to insurance benefits, and
20 publicly operated or sponsored health, mental health, and welfare assistance that might
21 be employed in the provision of services to the proposed protected person; and

22 (10) if conservatorship is recommended, a conservatorship outline that
23 identifies

24 (A) potential conservators;

25 (B) the specific services necessary and available to protect the
26 proposed protected person from serious damage to the proposed protected
27 person's property and affairs;

28 (C) the means by which the services described in (B) of this
29 paragraph may be financed;

30 (D) the specific, least restrictive authority needed by the
31 conservator to provide the services described in (B) of this paragraph.

1 (b) In addition to any initial visitor report provided under (a) of this section,
 2 every third year, the court may appoint a visitor to file a report reviewing the
 3 conservatorship during the period since the last visitor report, if any.

4 (c) In addition to the reports under (a) and (b) of this section, at any time
 5 during a conservatorship, a court may appoint a visitor to file a report reviewing the
 6 conservatorship during the period since the last visitor report, if any.

7 (d) A visitor report provided under (b) or (c) of this section must include

8 (1) the name and address of the protected person and the conservator;

9 (2) the services being provided to the protected person by or through
 10 the conservator;

11 (3) the significant actions taken by the conservator during the reporting
 12 period in regard to the protected person;

13 (4) a financial accounting of the estate that has been subject to the
 14 possession or control of the conservator;

15 (5) a list of the number and nature of the contacts between the
 16 conservator and the protected person if the protected person does not reside with the
 17 conservator;

18 (6) any other information requested by the court or necessary or
 19 desirable in the opinion of the visitor.

20 * **Sec. 22.** AS 13.26.285(e) is amended to read:

21 (e) If a protected person dies, the conservator shall deliver to the court for
 22 safekeeping any will of the deceased protected person **that** [WHICH] may have come
 23 into the conservator's possession **and** [,] inform the executor or a beneficiary named in
 24 the will that the will has been so delivered. **Once a conservator knows that the**
 25 **protected person has died, the conservator may not exercise authority over the**
 26 **protected person's affairs and estate except to pay reasonable burial expenses**
 27 **and to preserve, account for, and transfer control of assets to a personal**
 28 **representative, a temporary property custodian appointed by the court, or a**
 29 **person authorized to take custody of personal property by affidavit under**
 30 **AS 13.16.680** [, AND RETAIN THE ESTATE FOR DELIVERY TO A DULY
 31 APPOINTED PERSONAL REPRESENTATIVE OF THE DECEDENT OR OTHER

1 PERSONS ENTITLED TO IT]. If, after 40 days from the death of the protected
 2 person, no other person has been appointed personal representative and no application
 3 or petition for appointment is before the court, the conservator may apply to exercise
 4 the powers and duties of a personal representative in order to proceed with
 5 administering and distributing the decedent's estate without additional or further
 6 appointment. Upon application for an order granting the powers of a personal
 7 representative to a conservator, after notice to any person demanding notice under
 8 AS 13.16.070 and to any person nominated executor in any will of which the applicant
 9 is aware, the court may order the conferral of the power upon determining that there is
 10 no objection, and endorse the letters of the conservator to note that the formerly
 11 protected person is deceased and that the conservator has acquired all of the powers
 12 and duties of a personal representative. The making and entry of an order under this
 13 section has the effect of an order of appointment of a personal representative as
 14 provided in AS 13.16.115 and 13.16.245 - 13.16.655 [AS 13.16.245 - 13.16.655]
 15 except that estate in the name of the conservator, after administration, may be
 16 distributed to the decedent's successors without prior retransfer to the conservator as
 17 personal representative.

18 * **Sec. 23.** AS 13.26.300(a) is amended to read:

19 (a) A conservator shall pay from the estate all just claims against the estate
 20 and against the protected person arising before or after the conservatorship **was**
 21 **established but before the protected person dies,** upon their presentation and
 22 allowance. A claim is considered presented on the first to occur of receipt of the
 23 written statement of claim by the conservator [,] or the filing of the claim with the
 24 court. A presented claim is allowed if it is not disallowed by written statement mailed
 25 by the conservator to the claimant within 60 days after its presentation. The
 26 presentation of a claim tolls any statute of limitations relating to the claim until 30
 27 days after its disallowance. A claim may be presented by either of the following
 28 methods:

29 (1) the claimant may deliver or mail to the conservator a written
 30 statement of the claim indicating its basis, the name and address of the claimant, and
 31 the amount claimed;

1 (2) the claimant may file a written statement of the claim, in the form
 2 prescribed by rule, with the clerk of the court and deliver or mail a copy of the
 3 statement to the conservator.

4 * **Sec. 24.** AS 13.26.380(b) is amended to read:

5 (b) The public guardian, when appointed as guardian or conservator, shall
 6 endeavor, for as long as practical, to find a suitable private guardian or conservator for
 7 the public guardian's ward or protected person. For each ward and protected person,
 8 the public guardian shall **include in its annual** report **under AS 13.26.118(a)** to the
 9 court having jurisdiction of the ward or protected person **information on the**
 10 **availability of** [, AT LEAST ONCE EVERY SIX MONTHS, EFFORTS TO FIND] a
 11 private guardian or conservator.

12 * **Sec. 25.** AS 13.26 is amended by adding new sections to read:

13 **Article 7. Private Professional Guardians and Conservators.**

14 **Sec. 13.26.500. Registration and exemptions.** (a) Except as provided in (b)
 15 of this section, before being appointed as a private professional guardian or a private
 16 professional conservator, the person shall be registered with the division. The division
 17 shall establish by regulation the standards that an applicant must meet to be registered
 18 as a private professional guardian or private professional conservator.

19 (b) A financial institution regulated by the federal government or a financial
 20 institution regulated under AS 06 by the division of banking, securities, and
 21 corporations, Department of Community and Economic Development, is not required
 22 to be registered in order to be appointed as a private professional guardian or a private
 23 professional conservator. In this subsection, "financial institution" does not include a
 24 person who is exempt under AS 06.26.020 or who has received an exemption under
 25 AS 06.26.200.

26 **Sec. 13.26.510. Contents of application.** To apply for registration under
 27 AS 13.26.500, an applicant shall provide to the division

28 (1) a completed application on the form established by the division by
 29 regulation;

30 (2) a written waiver of confidentiality signed by the applicant allowing
 31 the division to access at any time relevant complaint information made about the

1 applicant to adult protective services, the designated protection and advocacy agency,
 2 the long-term care ombudsman, or an entity that certifies or licenses private
 3 professional guardians or private professional conservators;

4 (3) a written statement signed by the applicant that the applicant will
 5 allow immediate access at any time to the division to the file of a ward or protected
 6 person and to financial information regarding the applicant, including corporate or
 7 other business records;

8 (4) a detailed resume, including relevant experience, for each
 9 employee and contractor of the applicant who may provide services to a ward or
 10 protected person;

11 (5) a document stating the results of a criminal background check
 12 completed for each employee and contractor by an organization acceptable to the
 13 division;

14 (6) proof of the ability to be insured and bonded;

15 (7) if the applicant is not an individual, the documents under which the
 16 applicant was formed, including articles of incorporation and bylaws if the applicant is
 17 a corporation.

18 **Sec. 13.26.520. Failure to meet standards.** The division may not register an
 19 applicant who fails to meet the standards established by the division under
 20 AS 13.26.500.

21 **Sec. 13.26.530. Annual registration report.** Within 30 days following the
 22 end of the guardian's or conservator's fiscal year, a private professional guardian and a
 23 private professional conservator shall annually submit to the division

24 (1) evidence of the initial and continuing existence of a bond and
 25 professional liability insurance required by the court to be maintained by the guardian
 26 or conservator;

27 (2) a list, including case numbers, of the wards and protected persons
 28 for whom the guardian or conservator is acting as guardian or conservator;

29 (3) an accurate financial statement of the guardian or conservator
 30 providing the guardianship or conservatorship services;

31 (4) a letter stating that the guardian or conservator has completely

1 complied with all reporting requirements that apply to the guardian or conservator in
2 the prior fiscal year; and

3 (5) a copy of all of the guardian's or conservator's federal tax
4 documents filed with the Internal Revenue Service and all of the guardian's or
5 conservator's correspondence with the Internal Revenue Service.

6 **Sec. 13.26.540. Submission of court reports to division.** Upon request of
7 the division, a private professional guardian and a private professional conservator
8 shall submit to the division a copy of the reports that each is required to submit to the
9 court under this chapter.

10 **Sec. 13.26.550. Limitation on appointment.** (a) In addition to the other
11 requirements of this chapter, a private professional guardian or a private professional
12 conservator may not act as a guardian or a conservator in a court proceeding unless the
13 private professional guardian or private professional conservator is registered with the
14 division under AS 13.26.500 or unless exempt under AS 13.26.500(b), and

15 (1) certified at the time of appointment as a guardian or conservator by
16 an organization, such as the National Guardianship Foundation, selected by the
17 division by regulation; or

18 (2) is likely to become certified within one year of the appointment as
19 a guardian or conservator by an organization, such as the National Guardianship
20 Foundation, selected by the division by regulation.

21 (b) If a private professional guardian or a private professional conservator
22 does not become certified as required by (a)(2) of this section within one year after
23 appointment, the private professional guardian or private professional conservator may
24 not continue to act as a guardian or conservator in the court proceeding.

25 **Sec. 13.26.560. Fees.** (a) Notwithstanding the other provisions of this
26 chapter, a private professional guardian and a private professional conservator may not
27 receive a payment for services rendered for a ward or a protected person until the
28 private professional guardian or private professional conservator obtains court
29 approval of a proposed fee schedule. The fee schedule must include a statement of the
30 hourly fee for professional and administrative services and a monthly maximum
31 amount that the guardian or conservator can charge the ward or protected person.

1 (b) A payment requested by a private professional guardian or a private
 2 professional conservator that exceeds the established monthly maximum amount
 3 identified under (a) of this section may not be made unless the payment is approved by
 4 the court. A request for court approval of a fee that exceeds the established monthly
 5 maximum amount must include the following information for the services covered by
 6 the fee:

- 7 (1) the name of the person who provided the service;
- 8 (2) the date when the service was provided;
- 9 (3) the hourly rate of compensation for the service;
- 10 (4) a description of the service; and
- 11 (5) the amount of time used to perform the service.

12 **Sec. 13.26.570. Required notification.** A private professional guardian and a
 13 private professional conservator shall notify the division immediately if

- 14 (1) the guardian or conservator fails to file a report to the court
 15 required by this chapter;
- 16 (2) the guardian or conservator has been removed as a guardian or
 17 conservator for a ward or protected person;
- 18 (3) the guardian or conservator has received a gift with a value of more
 19 than \$100 from a ward or protected person during the two years before the
 20 appointment;
- 21 (4) the guardian or conservator has an interest in an enterprise that
 22 provides services to the ward or protected person;
- 23 (5) an employee or contractor of the guardian or conservator is arrested
 24 for any offense; or
- 25 (6) the private professional guardian or private professional
 26 conservator has filed for bankruptcy.

27 **Sec. 13.26.580. Discipline by division.** (a) If a person who is registered as a
 28 private professional guardian or private professional conservator under AS 13.26.500
 29 violates a provision of AS 13.26.500 - 13.26.590, the division may take the following
 30 disciplinary actions, singly or in combination, against the person:

- 31 (1) revoke the person's registration;

- 1 (2) suspend the person's registration for a specified period;
- 2 (3) censure or reprimand the person;
- 3 (4) impose limitations or conditions on the person's practice as a
- 4 private professional guardian or private professional conservator;
- 5 (5) impose requirements for remedial professional education to correct
- 6 deficiencies in the education, training, and skill of the person;
- 7 (6) impose probation requiring the person to report regularly to the
- 8 division on matters related to the grounds for probation.

9 (b) The division may withdraw probationary status if the deficiencies that

10 required the sanction are remedied.

11 (c) The division may reinstate a suspended or revoked registration if, after a

12 hearing, the board finds that the applicant is able to practice as a private professional

13 guardian or private professional conservator with skill and safety.

14 (d) The action of the division under this section is subject to AS 44.62.330 -

15 44.62.630.

16 **Sec. 13.26.590. Petition by division.** The division may petition the court to

17 review the conduct of a private professional guardian or a private professional

18 conservator if the division determines that the conduct of the guardian or conservator

19 may not be in the best interests of the ward or protected person.

20 * **Sec. 26.** AS 44.21.410(a) is amended to read:

- 21 (a) The office of public advocacy shall
- 22 (1) perform the duties of the public guardian under AS 13.26.360 -
- 23 13.26.410;
- 24 (2) provide visitors and experts in guardianship proceedings under
- 25 AS 13.26.131;
- 26 (3) provide guardian ad litem services to children in child protection
- 27 actions under AS 47.17.030(e) and to wards and respondents in guardianship
- 28 proceedings who will suffer financial hardship or become dependent upon a
- 29 government agency or a private person or agency if the services are not provided at
- 30 state expense under AS 13.26.025 [AS 13.26.112];
- 31 (4) provide legal representation in cases involving judicial bypass

1 procedures for minors seeking abortions under AS 18.16.030, in guardianship
2 proceedings to respondents who are financially unable to employ attorneys under
3 AS 13.26.106(b), to indigent parties in cases involving child custody in which the
4 opposing party is represented by counsel provided by a public agency, to indigent
5 parents or guardians of a minor respondent in a commitment proceeding concerning
6 the minor under AS 47.30.775;

7 (5) provide legal representation and guardian ad litem services under
8 AS 25.24.310; in cases arising under AS 47.15 (Uniform Interstate Compact on
9 Juveniles); in cases involving petitions to adopt a minor under AS 25.23.125(b) or
10 petitions for the termination of parental rights on grounds set out in
11 AS 25.23.180(c)(3); in cases involving petitions to remove the disabilities of a minor
12 under AS 09.55.590; in children's proceedings under AS 47.10.050(a) or under
13 AS 47.12.090; in cases involving appointments under AS 18.66.100(a) in petitions for
14 protective orders on behalf of a minor; and in cases involving indigent persons who
15 are entitled to representation under AS 18.85.100 and who cannot be represented by
16 the public defender agency because of a conflict of interests;

17 (6) develop and coordinate a program to recruit, select, train, assign,
18 and supervise volunteer guardians ad litem from local communities to aid in delivering
19 services in cases in which the office of public advocacy is appointed as guardian ad
20 litem;

21 (7) provide guardian ad litem services in proceedings under
22 AS 12.45.046;

23 (8) establish a fee schedule and collect fees for services provided by
24 the office, except as provided in AS 18.85.120 or when imposition or collection of a
25 fee is not in the public interest as defined under regulations adopted by the
26 commissioner of administration;

27 (9) provide visitors and guardians ad litem in proceedings under
28 AS 47.30.839;

29 (10) provide legal representation to an indigent parent of a child with a
30 disability; in this paragraph, "child with a disability" has the meaning given in
31 AS 14.30.350.

1 * **Sec. 27.** AS 44.21.440 is amended by adding a new subsection to read:

2 (b) The office of public advocacy may not use improper pressure to influence
3 the professional judgment of a person who is paid by the office of public advocacy to
4 act as an attorney, a guardian ad litem, or a visitor for a guardianship or
5 conservatorship established AS 13.26.

6 * **Sec. 28.** AS 44.62.330(a) is amended by adding a new paragraph to read:

7 (61) division of occupational licensing in the Department of
8 Community and Economic Development as to discipline under AS 13.26.580.

9 * **Sec. 29.** AS 13.26.105(d), 13.26.112, and 13.26.135(a)(8) are repealed.

10 * **Sec. 30.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 13.26.120(b), enacted by sec.
13 9 of this Act, has the effect of changing Rule 16(f), Alaska Rules of Probate Procedure, by
14 giving guardians additional authority to perform certain acts for a deceased ward.

15 (b) AS 13.26.250, as amended by sec. 19 of this Act, has the effect of changing Rule
16 17(e), Alaska Rules of Probate Procedure, by changing when a report is due and by adding
17 additional material to be included in the report.

18 * **Sec. 31.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 **TRANSITION.** (a) The court shall appoint a visitor under AS 13.26.118(a), amended
21 by sec. 7 of this Act, for a guardianship that was in existence on and before the effective date
22 of this Act within 90 days after the effective date of this Act if the guardianship has been in
23 existence for three or more years on the effective date of this Act.

24 (b) A person who, before the effective date of this Act, has been appointed by the
25 court under AS 13.26 to be a guardian or a conservator and whose appointment is still in
26 effect on the effective date of this Act shall comply with the registration requirements of
27 AS 13.26.500 - 13.26.520, enacted by sec. 25 of this Act, within 90 days after the effective
28 date of this Act. If the person does not comply within the 90 days, the court shall remove the
29 guardian or conservator and appoint a successor.

30 * **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 CONDITIONAL EFFECT. AS 13.26.120(b), as enacted by sec. 9 of this Act, and
2 AS 13.26.250, as amended by sec. 19 of this Act, take effect only if sec. 30 of this Act
3 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
4 of the State of Alaska.

5 * **Sec. 33.** This Act takes effect January 1, 2005.