

CS FOR HOUSE BILL NO. 427(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 4/8/04

Referred: Judiciary

Sponsor(s): REPRESENTATIVE ANDERSON

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 08.01.010 is amended by adding a new paragraph to read:

9 (38) regulation of private professional guardians and private
10 professional conservators (AS 08.26).

11 * **Sec. 2.** AS 08 is amended by adding a new chapter to read:

12 **Chapter 26. Private Professional Conservators and Guardians.**

13 **Article 1. Licensing.**

1 **Sec. 08.26.010. License required.** Except as provided by AS 08.26.180, a
 2 person may not engage in the business of providing services as a guardian or a
 3 conservator unless the person has a license issued under this chapter.

4 **Sec. 08.26.020. Requirements for individual private professional guardian**
 5 **license.** The department shall issue an individual private professional guardian license
 6 to an individual

7 (1) who is at least 21 years of age;

8 (2) who has two or more years of professional client casework
 9 experience or at least an associate degree in human services, social work, psychology,
 10 sociology, gerontology, special education, or a closely related field;

11 (3) who is certified as a guardian by a nationally recognized
 12 organization in the field of guardianships;

13 (4) who provides proof satisfactory to the department that the
 14 individual is able to be bonded and insured;

15 (5) whose criminal history record checks under AS 08.26.070 show
 16 that the individual has not been convicted of a crime within 10 years of the application
 17 that would affect the individual's ability to provide the services of a guardian
 18 competently and safely for the ward; and

19 (6) who satisfies the application requirements of AS 08.26.060.

20 **Sec. 08.26.030. Requirements for individual private professional**
 21 **conservator license.** The department shall issue an individual private professional
 22 conservator license to an individual

23 (1) who is at least 21 years of age;

24 (2) who has obtained a high school diploma, or a general education
 25 development diploma or its equivalent;

26 (3) who has six months' employment experience in a position
 27 involving financial management, or has at least an associate degree in accounting or a
 28 closely related field;

29 (4) who is certified as a conservator by a nationally recognized
 30 organization in the field of conservatorships;

31 (5) who provides proof satisfactory to the department that the

1 individual is able to be bonded and insured;

2 (6) whose criminal history record checks under AS 08.26.070 show
3 that the person has not been convicted of a crime within 10 years before the
4 application that would affect the individual's ability to provide the services of a
5 conservator competently and safely for the protected person; and

6 (7) who satisfies the application requirements of AS 08.26.060.

7 **Sec. 08.26.040. Requirements for organizational license.** (a) The
8 department shall issue an organizational license to a person who is not an individual if

9 (1) the person maintains a place of business in this state;

10 (2) the person is in compliance with the state and federal requirements
11 that apply to the organization;

12 (3) the person submits proof satisfactory to the department that the
13 person is able to be bonded and insured;

14 (4) the results of the criminal history record checks of the person under
15 AS 08.26.070 show that the person or following individuals have not been convicted
16 of a felony within the 10 years before the application that would affect the person's or
17 individuals' ability to provide the services of a guardian or conservator, whichever is
18 applicable, competently and safely for the ward or protected person:

19 (A) the officers of the organization, if the organization is a for-
20 profit corporation or a nonprofit corporation;

21 (B) the members or manager of the organization, if the
22 organization is a limited liability company; or

23 (C) the partners of the organization, if the organization is a
24 partnership, limited partnership, or limited liability partnership;

25 (5) the person designates in writing one of the following individuals to
26 be responsible within the organization for monitoring the organization's compliance
27 with this chapter and the other laws of this state:

28 (A) an officer of the organization, if the organization is a for-
29 profit corporation or a nonprofit corporation;

30 (B) a member or manager of the organization, if the
31 organization is a limited liability company;

1 (C) a partner of the organization, if the organization is a
2 partnership, limited partnership, or limited liability partnership;

3 (6) all of the individuals employed by the person to provide the
4 services of a private professional guardian or private professional conservator for the
5 organization have licenses under this chapter; and

6 (7) the person satisfies the application requirements of AS 08.26.060.

7 (b) If the organization's employees have licenses under both AS 08.26.020 and
8 08.26.030, the license issued under (a) of this section shall cover providing the
9 services of a guardian and a conservator.

10 (c) If the organization's employees have licenses only under AS 08.26.020 but
11 not under AS 08.26.030, the license issued under (a) of this section is limited to
12 providing the services of a guardian.

13 (d) If the applicant's employees have licenses under AS 08.26.030 but not
14 under AS 08.26.020, the license issued under (a) of this section is limited to providing
15 the services of a conservator.

16 **Sec. 08.26.050. Temporary license.** (a) The department shall issue a
17 temporary license to an individual under AS 08.26.020 or 08.26.030 who

18 (1) is not certified by the National Guardianship Foundation at the time
19 of the application but is likely to become certified within one year from the date of the
20 license, and otherwise satisfies the licensing requirements of AS 08.26.020 or
21 08.26.030; and

22 (2) satisfies the application requirements of AS 08.26.060.

23 (b) If the individual with a temporary license under (a) of this section submits
24 proof of certification by the National Guardianship Foundation within one year from
25 the date of the issuance of the temporary license, the department shall issue the
26 individual a license under AS 08.26.020 or 08.26.030 without requiring a new
27 application.

28 (c) A temporary license issued under this section may not be renewed.

29 **Sec. 08.26.060. Application requirements.** To apply for a license under this
30 chapter, a person shall submit an application on a form provided by the department
31 and submit

1 (1) two complete fingerprint cards containing fingerprints and other
 2 information required by the Department of Public Safety to obtain state and national
 3 criminal history record information under AS 12.62 and AS 12.64; the fingerprints
 4 must be the fingerprints of the applicant if the applicant is an individual, or, if the
 5 applicant is an organization, fingerprints of the

6 (A) officers of the organization, if the applicant is a
 7 corporation;

8 (B) members of the organization, if the applicant is a limited
 9 liability company;

10 (C) partners of the organization, if the applicant is a
 11 partnership;

12 (2) proof of the ability to be insured and bonded;

13 (3) a written waiver of confidentiality signed by the applicant allowing
 14 the department to access at any time relevant complaint information made about the
 15 applicant to adult protective services, the designated protection and advocacy agency,
 16 the long-term care ombudsman, or an entity that certifies or licenses private
 17 professional guardians or private professional conservators;

18 (4) a written statement signed by the applicant that the applicant will
 19 allow immediate access at any time to the department to the file of a ward or protected
 20 person and to financial information regarding the applicant, including corporate or
 21 other business records;

22 (5) a detailed resume, including relevant experience, for each
 23 employee and contractor of the applicant who may provide services to a ward or
 24 protected person;

25 (6) payment of the application fee, any criminal history record
 26 information checks fee charged under AS 12.62.160(d), and any other fees required by
 27 the department; and

28 (7) if the applicant is not an individual, a copy of the documents under
 29 which the applicant was formed, including articles of incorporation and bylaws if the
 30 applicant is a corporation.

31 **Sec. 08.26.070. Criminal history record information checks.** (a) For each

1 applicant for a license under this chapter, the department shall submit the fingerprint
 2 cards and other relevant information received with the application to the Department
 3 of Public Safety and request the Department of Public Safety to

4 (1) submit the fingerprints to the Federal Bureau of Investigation for a
 5 national criminal history record information check on the applicant;

6 (2) perform a state criminal history record information check on the
 7 applicant; and

8 (3) provide the department with the results of the criminal history
 9 record information checks made under (1) and (2) of this subsection.

10 (b) The department may not issue a license to a person under this section
 11 unless the department receives the report required by (a)(3) of this section.

12 **Article 2. Reports.**

13 **Sec. 08.26.080. Annual report.** Within 30 days following the end of each
 14 calendar year, a licensee shall submit to the department

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

18 (2) a list, including case numbers, of the wards and protected persons
 19 for whom the licensee is acting as a private professional guardian or private
 20 professional conservator;

21 (3) an accurate financial statement of the licensee;

22 (4) a letter stating that the licensee has filed all required court reports
 23 in the previous calendar year;

24 (5) a copy of all of the licensee's federal tax documents filed with the
 25 Internal Revenue Service and all of the licensee's correspondence with the Internal
 26 Revenue Service; and

27 (6) a list of all persons currently employed by the licensee in the
 28 business for which the license was issued.

29 **Sec. 08.26.090. Submission of court reports to department.** Upon request
 30 of the department, a licensee shall submit to the department a copy of the reports that
 31 the licensee is required to submit to a court under AS 13.26.

1 **Article 3. Practices.**

2 **Sec. 08.26.100. Court appointment.** A person who engages in the business
3 of providing services as a guardian or conservator may not be appointed a guardian or
4 a conservator in a court proceeding unless the person is licensed under this chapter or
5 exempt under AS 08.26.180.

6 **Sec. 08.26.110. Fees.** (a) A licensee may not receive a payment for services
7 rendered to a ward or a protected person until the licensee obtains court approval of a
8 proposed fee schedule. The fee schedule must include a statement of the hourly fee
9 for professional and administrative services and a monthly maximum amount that the
10 licensee can charge the ward or protected person.

11 (b) A payment requested by a licensee that exceeds the established monthly
12 maximum amount identified under (a) of this section may not be made unless the
13 payment is approved by the court. A request for court approval of a fee that exceeds
14 the established monthly maximum amount must include the following information for
15 the services covered by the fee:

- 16 (1) the name of the person who provided the service;
17 (2) the date when the service was provided;
18 (3) the hourly rate of compensation for the service;
19 (4) a description of the service; and
20 (5) the amount of time used to perform the service.

21 **Sec. 08.26.120. Required notification.** A licensee shall notify the department
22 immediately if

- 23 (1) the licensee fails to file a report to the court required by this
24 chapter;
25 (2) the licensee has been removed as a guardian or conservator for a
26 ward or protected person;
27 (3) the licensee has received a gift with a value of more than \$100
28 from a ward or protected person during the two years before the appointment;
29 (4) the licensee has an interest in an enterprise that provides services to
30 the ward or protected person;
31 (5) an employee or contractor of the licensee is arrested for any

1 offense; or

2 (6) the licensee has filed for bankruptcy.

3 **Article 4. Discipline.**

4 **Sec. 08.26.130. Grounds for disciplinary action.** The department may take
5 disciplinary action against a person under AS 08.01.075 if the department determines
6 that the person

7 (1) obtained or attempted to obtain a license under this chapter through
8 deceit, fraud, or intentional misrepresentation;

9 (2) has not complied the standards of conduct established by the
10 department under AS 13.26.001;

11 (3) forfeited a license in this or another jurisdiction as a result of
12 deceit, fraud, intentional misrepresentation, or professional incompetence;

13 (4) has been found by a court in this state to have engaged in
14 professional misconduct or incompetence;

15 (5) has advertised its services in a false or misleading manner;

16 (6) has been convicted, including a conviction based on a guilty plea or
17 plea of nolo contendere, of a felony or other crime that affects the person's ability to
18 provide the licensee's services competently and safely for the ward or protected
19 person;

20 (7) has been found to have abandoned, exploited, abused, or neglected
21 a vulnerable adult; in this paragraph, "vulnerable adult" has the meaning given in
22 AS 47.24.900;

23 (8) has failed to comply with this chapter or with a regulation adopted
24 under this chapter;

25 (9) has continued or attempted to practice after becoming unfit due to
26 professional incompetence;

27 (10) has failed to maintain certification by a nationally recognized
28 organization in the field of

29 (A) guardianships, if the person was issued an individual
30 private professional guardian license; or

31 (B) conservatorships, if the individual was issued an individual

1 private professional conservator license;

2 (11) the licensee is not able to be bonded and insured; or

3 (12) if the licensee has an organizational license,

4 (A) does not maintain a place of business in this state;

5 (B) is not in compliance with the state and federal requirements
6 that apply to the organization; or

7 (C) has an employee who provides the services of a private
8 professional guardian or private professional conservator for the organization
9 and is not licensed under this chapter.

10 **Sec. 08.26.140. Petition by department.** In addition to the disciplinary
11 actions allowed under AS 08.01.075, the department may petition a court to review the
12 conduct of a licensee if the department determines that the conduct of the licensee may
13 not be in the best interests of the ward or protected person.

14 **Article 5. General Provisions.**

15 **Sec. 08.26.180. Exemption.** A financial institution regulated by the federal
16 government or a financial institution regulated under AS 06 by the division in the
17 department that regulates banking, securities, and corporations, is not required to be
18 licensed under this chapter in order to engage in the business of providing services as a
19 guardian or a conservator or be appointed as a private professional guardian or a
20 private professional conservator by a court. In this subsection, "financial institution"
21 does not include a person who is exempt under AS 06.26.020 or who has received an
22 exemption under AS 06.26.200.

23 **Sec. 08.26.190. Definitions.** In this chapter,

24 (1) "conservator" has the meaning given in AS 13.06.050;

25 (2) "department" means the Department of Community and Economic
26 Development;

27 (3) "guardian" has the meaning given in AS 13.06.050;

28 (4) "licensee" means a person licensed under this chapter;

29 (5) "organizational license" means a license issued under
30 AS 08.26.040;

31 (6) "private professional conservator" means a person who acts as a

1 conservator under AS 13.26.165 - 13.26.320 and receives compensation for acting in
2 that capacity;

3 (7) "private professional conservator license" means a license issued
4 under AS 08.26.030;

5 (8) "private professional guardian" means a person who acts as a
6 guardian under AS 13.26.030 - 13.26.155 and receives compensation for acting in that
7 capacity;

8 (9) "private professional guardian license" means a license issued
9 under AS 08.26.040;

10 (10) "protected person" has the meaning given in AS 13.26.005;

11 (11) "ward" has the meaning given in AS 13.26.005.

12 * **Sec. 3.** AS 13.26 is amended by adding a new section to article 1 to read:

13 **Sec. 13.26.001. Adoption of standards of practice.** It is the policy of the
14 state that all guardians and conservators, when making decisions for their wards or
15 protected persons, shall abide by the highest ethical standards of decision making and
16 shall consider the standards of practice adopted by the department by regulation. The
17 department shall adopt standards of practice for guardians and conservators and,
18 before doing so, shall review the standards of practice adopted by a national
19 organization with expertise in the area of standards of practice for guardians and
20 conservators, such as the National Guardianship Foundation.

21 * **Sec. 4.** AS 13.26.005 is amended by adding new paragraphs to read:

22 (11) "department" means the Department of Community and
23 Economic Development;

24 (12) "private professional conservator" means a person, other than the
25 public guardian, who is licensed under AS 08.26 or exempt under AS 08.26.180;

26 (13) "private professional guardian" means a person, other than the
27 public guardian, who is licensed under AS 08.26 or exempt under AS 08.26.180.

28 * **Sec. 5.** AS 13.26.013(a) is amended to read:

29 (a) A notice of the filing of a petition, a summary of all formal proceedings,
30 and a dispositional order or modification or termination of a dispositional order
31 relating to a proceeding under this chapter shall be available for public inspection. All

1 other information contained in the court records relating to a proceeding under this
 2 chapter is confidential and available only upon court order for good cause shown or to
 3 the following persons:

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

6 (2) a person designated by the person who is the subject of the court
 7 record;

8 (3) the guardian of the person who is the subject of the court record or
 9 the attorney of the guardian;

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

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

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

14 (7) a member of the clerical or administrative staff of the court if
 15 access is essential for authorized internal administrative purposes; **and**

16 **(8) the department when a private professional guardian or a**
 17 **private professional conservator is involved in the proceeding.**

18 * **Sec. 6.** AS 13.26 is amended by adding a new section to article 1 to read:

19 **Sec. 13.26.025. Appointment of a guardian ad litem.** (a) Upon the request
 20 of a ward, protected person, or respondent, or the attorney of a ward, protected person,
 21 or respondent, the court shall appoint a guardian ad litem to protect the rights of the
 22 ward, protected person, or respondent in proceedings under AS 13.26.090 - 13.26.320.
 23 The court shall make the appointment if the court is satisfied that, because of impaired
 24 ability effectively to receive and evaluate information regarding the proceedings or
 25 because of impaired ability to communicate decisions regarding the proceedings, the
 26 ward, protected person, or respondent cannot determine the ward's, protected person's,
 27 or respondent's own interests without assistance, and

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

29 (2) the interests of the ward, protected person, or respondent conflict
 30 with those of the ward's, protected person's, or respondent's guardian or conservator;
 31 or

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

2 (b) A person appointed may act as a guardian ad litem for a ward, protected
3 person, or respondent if the court determines that the appointment is appropriate under
4 the standards set out in (a) of this section and another party whose interests would not
5 conflict with those of the ward, protected person, or respondent is not readily available
6 and able to serve as the guardian ad litem. When a person who has been appointed by
7 the court as the attorney for the ward, protected person, or respondent is appointed to
8 act as the guardian ad litem for the ward, protected person, or respondent, the
9 appointment of the person as the attorney ends, and the person appointed as the
10 guardian ad litem shall act exclusively as a guardian ad litem for the ward, protected
11 person, or respondent. Nothing in this subsection is intended to impinge on the right
12 of a ward, protected person, or respondent to have an attorney.

13 (c) The guardian ad litem shall assist the ward, protected person, or respondent
14 in determining the ward's, protected person's, or respondent's interests in regard to the
15 legal proceedings that involve the ward, protected person, or respondent. If the ward,
16 protected person, or respondent is entirely incapable of determining those interests, the
17 guardian ad litem shall make that determination and advise the court and counsel for
18 all parties accordingly. The guardian ad litem shall

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

22 (2) encourage the ward, protected person, or respondent to participate,
23 to the maximum extent possible, in all decisions and to act on the ward's, protected
24 person's, or respondent's own behalf on all matters in which the ward, protected
25 person, or respondent is able.

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

30 (e) The office of public advocacy shall provide guardian ad litem services to
31 persons who would suffer financial hardship or become dependent upon a government

1 agency or a private person or agency if the services were not to be provided at state
2 expense.

3 * **Sec. 7.** AS 13.26.111(b) is amended to read:

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

8 * **Sec. 8.** AS 13.26.117 is amended to read:

9 **Sec. 13.26.117. Guardianship implementation report.** Within 90 days after
10 **distribution of the order of** appointment as guardian, the guardian shall submit to the
11 court a report. The report must describe the guardian's program for implementing the
12 guardianship plan. The primary goal of the program described in the report must be,
13 to the maximum extent possible, to develop or regain the ward's abilities to handle the
14 ward's own affairs. The report must consider housing, medical care, and educational
15 and vocational needs and resources. In developing the report, the guardian shall
16 consult with the ward to the maximum extent possible. [THE OFFICE OF PUBLIC
17 GUARDIAN SHALL CONTACT THE GUARDIAN TO OFFER ASSISTANCE IN
18 PREPARING THE REPORT.] The report must specify the services that are necessary
19 to meet the essential requirements for the ward's physical health or safety and the
20 means for obtaining the services. The report must specify the manner in which the
21 guardian will exercise and share decision-making authority and other items that will
22 assist in fulfilling the needs of the ward, the terms of the guardianship order, and the
23 duties of the guardian.

24 * **Sec. 9.** AS 13.26.118 is amended to read:

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

- 1 (1) the court orders it;
- 2 (2) there is a significant change in the capacity of the ward to meet the
- 3 essential requirements for health and safety or to protect the ward's rights;
- 4 (3) the guardian resigns or is removed;
- 5 (4) the guardianship is terminated; or
- 6 (5) the ward requests it.

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

- 9 (1) the name and address of the ward and the guardian;
- 10 (2) the ward's present mental, physical, and social conditions and
- 11 present living arrangements and the ward's opinion of these arrangements;
- 12 (3) changes in the capacity of the ward to meet essential requirements
- 13 for physical health and safety;
- 14 (4) the services being provided to the ward;
- 15 (5) the significant actions taken by the guardian during the reporting
- 16 period in regard to the ward;
- 17 (6) a financial accounting of the estate that has been subject to the
- 18 possession or control of the guardian;
- 19 (7) a list of the number and nature of the contacts between the guardian
- 20 and ward if the ward does not reside with the guardian;
- 21 (8) any other information requested by the court or necessary or
- 22 desirable in the opinion of the guardian [OR VISITOR].

23 * **Sec. 10.** AS 13.26.118 is amended by adding a new subsection to read:

- 24 (c) The visitor report required by (a) of this section must include
- 25 (1) the name and address of the ward and the guardian;
- 26 (2) the services being provided to the ward by or through the guardian;
- 27 (3) the significant actions taken by the guardian during the reporting
- 28 period in regard to the ward;
- 29 (4) a financial accounting of the estate that has been subject to the
- 30 possession or control of the guardian;
- 31 (5) a list of the number and nature of the contacts between the

1 conservator and the ward if the ward does not reside with the guardian;

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

4 * **Sec. 11.** AS 13.26.120 is amended by adding a new subsection to read:

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

11 * **Sec. 12.** AS 13.26.125(a) is amended to read:

12 (a) On petition of the ward, the guardian, or any person interested in the
13 ward's welfare, **or on the court's own motion**, the court may (1) review and amend a
14 decision of a guardian; or (2) if alternatives that are less restrictive than guardianship
15 or less restrictive than the existing guardianship plan would assist the ward in meeting
16 essential requirements for physical health and safety, modify the provisions of its
17 order to (A) amend the guardianship plan or the responsibilities of the guardian; (B)
18 remove a guardian and appoint a successor; or (C) terminate the guardianship. On
19 petition of the guardian, the court may accept a resignation and make any other order
20 that may be appropriate.

21 * **Sec. 13.** AS 13.26.131(b) is amended to read:

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

26 * **Sec. 14.** AS 13.26.145(a) is amended to read:

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

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

1 (c) A person may be appointed as the guardian of an incapacitated person
 2 notwithstanding the provisions of (b) of this section if the person is the spouse, adult
 3 child, parent, or sibling of the incapacitated person and the court determines that the
 4 potential conflict of interest is insubstantial and that the appointment would clearly be
 5 in the best interests of the incapacitated person. **When appointing a relative or**
 6 **friend of the incapacitated person as the guardian of an incapacitated person, the**
 7 **court shall require that the proposed guardian complete one hour of mandatory**
 8 **education on the basics of guardianship before the appointment or within 30 days**
 9 **after the appointment.**

10 * **Sec. 16.** AS 13.26.145(d) is amended to read:

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

13 (1) **an individual** [A PERSON, ASSOCIATION,] or **organization**
 14 [PRIVATE NONPROFIT CORPORATION] nominated by the incapacitated person
 15 [,] if, at the time of the nomination, the incapacitated person **has, in the opinion of the**
 16 **court, sufficient mental** [HAD THE] capacity to make **an informed** [A
 17 REASONABLY INTELLIGENT] choice;

18 (2) the spouse of the incapacitated person;

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

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

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

25 (6) a private **professional guardian** [ASSOCIATION OR
 26 NONPROFIT CORPORATION WITH A GUARDIANSHIP PROGRAM FOR
 27 INCAPACITATED PERSONS];

28 (7) the public guardian.

29 * **Sec. 17.** AS 13.26.145(e) is amended to read:

30 (e) The priorities established in (d) of this section are not binding, and the
 31 court shall select the **individual** [PERSON, ASSOCIATION,] or **organization**

1 [NONPROFIT CORPORATION] that is best qualified and willing to serve. The court
 2 shall also **consider** [GIVE CONSIDERATION TO] a nomination by a person
 3 described in (d) of this section and to a nomination in the will of a deceased parent or
 4 spouse of the incapacitated person.

5 * **Sec. 18.** AS 13.26.150(c) is amended to read:

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

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

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

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

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

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

27 (6) **the guardian has the powers** [IF A CONSERVATOR FOR THE
 28 ESTATE OF THE WARD HAS NOT BEEN APPOINTED, THE GUARDIAN MAY
 29 RECEIVE MONEY] and **duties of a conservator under this chapter** [PROPERTY
 30 DELIVERABLE TO THE WARD AND APPLY THE MONEY AND PROPERTY
 31 FOR SUPPORT, CARE, AND EDUCATION OF THE WARD]; however, the

1 guardian may not apply the ward's money or property for the services as guardian or
 2 for room and board that the guardian[,] or the guardian's spouse, parent, or child has
 3 furnished the ward unless, before payment, the court finds that the ward is financially
 4 able to pay and that the charge is reasonable; notice of a request for payment approval
 5 shall be provided to at least one relative of the ward if possible; the guardian shall
 6 exercise care to conserve any excess money or property for the ward's needs;

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

13 * **Sec. 19.** AS 13.26.195(b) is amended to read:

14 (b) Upon receipt of a petition for appointment of a conservator or other
 15 protective order for reasons other than minority, the court shall set a date for hearing.
 16 Unless the person to be protected has counsel of the person's own choice, the court
 17 must appoint a lawyer to represent the person [WHO THEN HAS THE POWERS
 18 AND DUTIES OF A GUARDIAN AD LITEM]. If the alleged disability is mental
 19 illness, mental deficiency, physical illness or disability, advanced age, chronic use of
 20 drugs, or chronic intoxication, the court may direct that the person to be protected be
 21 examined by a physician designated by the court, preferably a physician who is not
 22 connected with any institution in which the person is a patient or is detained. The
 23 court may send a visitor to interview the person to be protected. The visitor may be a
 24 guardian ad litem or an officer or employee of the court.

25 * **Sec. 20.** AS 13.26.210 is repealed and reenacted to read:

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

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

31 (1) provides, or is likely to provide during the conservatorship,

1 substantial services to the protected person in a professional or business capacity,
2 other than in the capacity of conservator;

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

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

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

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

14 (d) Subject to (c) of this section, qualified persons have priority for
15 appointment in the following order:

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

19 (2) the spouse of the protected person;

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

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

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

25 (6) a private professional conservator;

26 (7) the public guardian.

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

31 (f) In addition to any other requirement of this section, when appointing a

1 relative or friend of the incapacitated person as the conservator of a protected person,
 2 the court shall require that the proposed conservator complete one hour of mandatory
 3 education on the basics of conservatorship before the appointment or within 30 days
 4 after the appointment. If the person is appointed based on the person's agreement to
 5 complete the mandatory education and the person fails to complete the mandatory
 6 education within the 30 days, the court shall remove the conservator and appoint a
 7 successor.

8 * **Sec. 21.** AS 13.26.250 is amended to read:

9 **Sec. 13.26.250. Inventory, implementation report, and records.** Within 90
 10 days after **distribution of the order of** appointment, every conservator shall prepare
 11 and file with the appointing court a **conservator implementation report and a**
 12 complete inventory of the estate of the protected person together with an oath or
 13 affirmation that it is complete and accurate so far as the conservator is informed. The
 14 conservator shall provide a copy of it to the protected person if the protected person
 15 can be located, has attained the age of 14 years, and has sufficient mental capacity to
 16 understand these matters, and to any parent or guardian with whom the protected
 17 person resides. The conservator shall keep suitable records of the administration and
 18 exhibit them on request of any interested person.

19 * **Sec. 22.** AS 13.26.255 is amended to read:

20 **Sec. 13.26.255. Accounts. A conservator shall submit a report to the court**
 21 **at least every year. In addition, a** [EVERY] conservator **shall** [MUST] account to
 22 the court for administration of the trust upon resignation or removal [,] and at other
 23 times as the court may direct. On termination of the protected person's minority or
 24 disability, a conservator may account to the court or to the former protected person or
 25 the protected person's personal representative. Subject to appeal or vacation within
 26 the time permitted, an order, made upon notice and hearing, allowing an intermediate
 27 account of a conservator, adjudicates as to the conservator's liabilities concerning the
 28 matters considered in connection with it; and an order, made upon notice and hearing,
 29 allowing a final account, adjudicates as to all previously unsettled liabilities of the
 30 conservator to the protected person or the protected person's successors relating to the
 31 conservatorship. In connection with any account, the court may require a conservator

1 to submit to a physical check of the estate in the conservator's control, to be made in
2 any manner the court may specify.

3 * **Sec. 23.** AS 13.26 is amended by adding a new section to read:

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

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

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

13 (3) an evaluation of the proposed protected person's need for mental
14 health treatment and whether there is a substantial probability that available treatment
15 will significantly improve the proposed protected person's mental condition;

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

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

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

25 (7) a summary of the information that

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

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

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

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

5 (10) if conservatorship is recommended, a conservatorship outline that
 6 identifies

7 (A) potential conservators;

8 (B) the specific services necessary and available to protect the
 9 proposed protected person from serious damage to the proposed protected
 10 person's property and affairs;

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

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

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

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

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

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

23 (2) the services being provided to the protected person by or through
 24 the conservator;

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

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

29 (5) a list of the number and nature of the contacts between the
 30 conservator and the protected person if the protected person does not reside with the
 31 conservator;

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

3 * **Sec. 24.** AS 13.26.285(e) is amended to read:

4 (e) If a protected person dies, the conservator shall deliver to the court for
5 safekeeping any will of the deceased protected person **that** [WHICH] may have come
6 into the conservator's possession **and** [,] inform the executor or a beneficiary named in
7 the will that the will has been so delivered. **Once a conservator knows that the**
8 **protected person has died, the conservator may not exercise authority over the**
9 **protected person's affairs and estate except to pay reasonable burial expenses**
10 **and to preserve, account for, and transfer control of assets to a personal**
11 **representative, a temporary property custodian appointed by the court, or a**
12 **person authorized to take custody of personal property by affidavit under**
13 **AS 13.16.680** [, AND RETAIN THE ESTATE FOR DELIVERY TO A DULY
14 APPOINTED PERSONAL REPRESENTATIVE OF THE DECEDENT OR OTHER
15 PERSONS ENTITLED TO IT]. If, after 40 days from the death of the protected
16 person, no other person has been appointed personal representative and no application
17 or petition for appointment is before the court, the conservator may apply to exercise
18 the powers and duties of a personal representative in order to proceed with
19 administering and distributing the decedent's estate without additional or further
20 appointment. Upon application for an order granting the powers of a personal
21 representative to a conservator, after notice to any person demanding notice under
22 AS 13.16.070 and to any person nominated executor in any will of which the applicant
23 is aware, the court may order the conferral of the power upon determining that there is
24 no objection, and endorse the letters of the conservator to note that the formerly
25 protected person is deceased and that the conservator has acquired all of the powers
26 and duties of a personal representative. The making and entry of an order under this
27 section has the effect of an order of appointment of a personal representative as
28 provided in AS 13.16.115 and **13.16.245 - 13.16.655** [AS 13.16.245 - 13.16.655]
29 except that estate in the name of the conservator, after administration, may be
30 distributed to the decedent's successors without prior retransfer to the conservator as
31 personal representative.

1 * **Sec. 25.** AS 13.26.300(a) is amended to read:

2 (a) A conservator shall pay from the estate all just claims against the estate
3 and against the protected person arising before or after the conservatorship **was**
4 **established but before the protected person dies,** upon their presentation and
5 allowance. A claim is considered presented on the first to occur of receipt of the
6 written statement of claim by the conservator [,] or the filing of the claim with the
7 court. A presented claim is allowed if it is not disallowed by written statement mailed
8 by the conservator to the claimant within 60 days after its presentation. The
9 presentation of a claim tolls any statute of limitations relating to the claim until 30
10 days after its disallowance. A claim may be presented by either of the following
11 methods:

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

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

18 * **Sec. 26.** AS 13.26.380(b) is amended to read:

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

26 * **Sec. 27.** AS 44.21.410(a) is amended to read:

27 (a) The office of public advocacy shall

28 (1) perform the duties of the public guardian under AS 13.26.360 -
29 13.26.410;

30 (2) provide visitors and experts in guardianship proceedings under
31 AS 13.26.131;

1 (3) provide guardian ad litem services to children in child protection
2 actions under AS 47.17.030(e) and to wards and respondents in guardianship
3 proceedings who will suffer financial hardship or become dependent upon a
4 government agency or a private person or agency if the services are not provided at
5 state expense under AS 13.26.025 [AS 13.26.112];

6 (4) provide legal representation in cases involving judicial bypass
7 procedures for minors seeking abortions under AS 18.16.030, in guardianship
8 proceedings to respondents who are financially unable to employ attorneys under
9 AS 13.26.106(b), to indigent parties in cases involving child custody in which the
10 opposing party is represented by counsel provided by a public agency, to indigent
11 parents or guardians of a minor respondent in a commitment proceeding concerning
12 the minor under AS 47.30.775;

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

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

27 (7) provide guardian ad litem services in proceedings under
28 AS 12.45.046;

29 (8) establish a fee schedule and collect fees for services provided by
30 the office, except as provided in AS 18.85.120 or when imposition or collection of a
31 fee is not in the public interest as defined under regulations adopted by the

1 commissioner of administration;

2 (9) provide visitors and guardians ad litem in proceedings under
3 AS 47.30.839;

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

7 * **Sec. 28.** AS 44.21.440 is amended by adding a new subsection to read:

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

12 * **Sec. 29.** AS 44.62.330(a) is amended by adding a new paragraph to read:

13 (61) the Department of Community and Economic Development as to
14 the licensing and regulation of private professional guardians and conservators under
15 AS 08.26.

16 * **Sec. 30.** AS 13.26.105(d), 13.26.112, and 13.26.135(a)(8) are repealed.

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

19 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 13.26.120(b), enacted by sec.
20 11 of this Act, has the effect of changing Rule 16(f), Alaska Rules of Probate Procedure, by
21 giving guardians additional authority to perform certain acts for a deceased ward.

22 (b) AS 13.26.250, as amended by sec. 21 of this Act, has the effect of changing Rule
23 17(e), Alaska Rules of Probate Procedure, by changing when a report is due and by adding
24 additional material to be included in the report.

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

27 **TRANSITION.** (a) The court shall appoint a visitor under AS 13.26.118(a), amended
28 by sec. 9 of this Act, for a guardianship that was in existence on and before the effective date
29 of sec. 9 of this Act within 90 days after the effective date of sec. 9 of this Act if the
30 guardianship has been in existence for three or more years on the effective date of sec. 9 of
31 this Act.

1 (b) A person who, before the effective date of sec. 2 of this Act, has been appointed
2 by the court under AS 13.26 to be a guardian or a conservator, whose appointment is still in
3 effect on the effective date of sec. 2 of this Act, and who are required to be licensed under
4 AS 08.26, enacted by sec. 2 of this Act, shall comply with the licensing requirements of
5 AS 08.26 within 60 days after the date when the regulations for sec. 2 of this Act are adopted
6 under sec. 33 of this Act. If the person does not comply within the 60 days, the court may
7 remove the guardian or conservator and appoint a successor.

8 * **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 TRANSITION: REGULATIONS. The Department of Community and Economic
11 Development may proceed to adopt regulations necessary to implement the changes made by
12 secs. 1 and 2 of this Act. The regulations take effect under AS 44.62 (Administrative
13 Procedure Act), but not before the effective date of secs. 1 and 2 of this Act.

14 * **Sec. 34.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 CONDITIONAL EFFECT. AS 13.26.120(b), as enacted by sec. 11 of this Act, and
17 AS 13.26.250, as amended by sec. 21 of this Act, take effect only if sec. 31 of this Act
18 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
19 of the State of Alaska.

20 * **Sec. 35.** Section 33 of this Act takes effect immediately under AS 01.10.070(c).

21 * **Sec. 36.** This Act takes effect January 1, 2005.