

HOUSE BILL NO. 494

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Introduced: 3/24/06

Referred: Labor and Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to private professional conservators and private and public
2 guardians."

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

4 * **Section 1.** AS 08.26.010 is amended to read:

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

8 * **Sec. 2.** AS 08.26.020 is amended to read:

9 **Sec. 08.26.020. Requirements for [INDIVIDUAL] private professional full**
10 **and partial guardian licenses [LICENSE].** The department shall issue **a** [AN
11 INDIVIDUAL] private professional **full** guardian license to an individual

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

13 (2) who has two or more years of professional client casework
14 experience or at least an associate degree in human services, social work, psychology,

1 sociology, gerontology, special education, or a closely related field;

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

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

6 (5) whose criminal history record checks under AS 08.26.070 show
7 that the individual has not been convicted of a **felony or a misdemeanor offense**
8 **involving fraud, misrepresentation, material omission, misappropriation, theft,**
9 **or conversion in the state or in any other jurisdiction;** [CRIME WITHIN 10
10 YEARS OF THE APPLICATION THAT WOULD AFFECT THE INDIVIDUAL'S
11 ABILITY TO PROVIDE THE SERVICES OF A GUARDIAN COMPETENTLY
12 AND SAFELY FOR THE WARD; AND]

13 (6) who satisfies the application requirements of AS 08.26.060; **and**

14 **(7) who satisfies the requirements for obtaining a private**
15 **professional conservator license under AS 08.26.030.**

16 * **Sec. 3.** AS 08.26.020 is amended by adding a new subsection to read:

17 (b) The department shall issue a private professional partial guardian license
18 to an individual who satisfies the requirements under (a)(1) - (6) of this section. A
19 licensed private professional partial guardian may not perform conservator services.

20 * **Sec. 4.** AS 08.26.030 is amended to read:

21 **Sec. 08.26.030. Requirements for [INDIVIDUAL] private professional**
22 **conservator license.** The department shall issue **a** [AN INDIVIDUAL] private
23 professional conservator license to an individual

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

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

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

30 (4) who is certified as a guardian by a nationally recognized
31 organization in the field of guardianships;

1 (5) who provides proof satisfactory to the department that the
2 individual is able to be bonded and insured;

3 (6) whose criminal history record checks under AS 08.26.070 show
4 that the **individual** [PERSON] has not been convicted of a **felony or a misdemeanor**
5 **offense involving fraud, misrepresentation, material omission, misappropriation,**
6 **theft, or conversion in the state or in any other jurisdiction** [CRIME WITHIN 10
7 YEARS BEFORE THE APPLICATION THAT WOULD AFFECT THE
8 INDIVIDUAL'S ABILITY TO PROVIDE THE SERVICES OF A CONSERVATOR
9 COMPETENTLY AND SAFELY FOR THE PROTECTED PERSON]; and

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

11 * **Sec. 5.** AS 08.26.060 is amended to read:

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

15 (1) two complete fingerprint cards containing fingerprints and other
16 information required by the Department of Public Safety to obtain state and national
17 criminal history record information under AS 12.62 and AS 12.64; [THE
18 FINGERPRINTS MUST BE THE FINGERPRINTS OF THE APPLICANT IF THE
19 APPLICANT IS AN INDIVIDUAL, OR, IF THE APPLICANT IS AN
20 ORGANIZATION, FINGERPRINTS OF THE

21 (A) OFFICERS OF THE ORGANIZATION, IF THE
22 APPLICANT IS A CORPORATION;

23 (B) MEMBERS OF THE ORGANIZATION, IF THE
24 APPLICANT IS A LIMITED LIABILITY COMPANY;

25 (C) PARTNERS OF THE ORGANIZATION, IF THE
26 APPLICANT IS A PARTNERSHIP;]

27 (2) proof of **professional liability insurance and the ability to obtain**
28 **a surety bond if ordered by a court** [THE ABILITY TO BE INSURED AND
29 BONDED];

30 (3) a written waiver of confidentiality signed by the applicant allowing
31 the department 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 (4) a written statement signed by the applicant that the applicant will
 5 allow immediate access at any time to the department 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 (5) 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; **and**

11 (6) payment of the application fee, any criminal history record
 12 information checks fee charged under AS 12.62.160(d), and any other fees required by
 13 the department [; AND

14 (7) IF THE APPLICANT IS NOT AN INDIVIDUAL, A COPY OF
 15 THE DOCUMENTS UNDER WHICH THE APPLICANT WAS FORMED,
 16 INCLUDING ARTICLES OF INCORPORATION AND BYLAWS IF THE
 17 APPLICANT IS A CORPORATION].

18 * **Sec. 6.** AS 08.26.080 is amended to read:

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

21 (1) evidence of the [INITIAL AND] continuing existence of a **court**
 22 **ordered** bond, **if any,** and professional liability insurance [REQUIRED BY A
 23 COURT] to be maintained by the guardian or conservator;

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

27 (3) an accurate financial statement of the licensee, **including total fees**
 28 **collected from the protected person, total business expenses, and documents**
 29 **necessary to establish financial solvency;**

30 (4) a letter stating that the licensee has filed all required court reports
 31 in the previous calendar year; **and**

1 (5) a copy of all of the licensee's federal tax documents filed with the
 2 Internal Revenue Service and all of the licensee's correspondence with the Internal
 3 Revenue Service **for the calendar year** [; AND

4 (6) A LIST OF ALL PERSONS CURRENTLY EMPLOYED BY
 5 THE LICENSEE IN THE BUSINESS FOR WHICH THE LICENSE WAS ISSUED].

6 * **Sec. 7.** AS 08.26.100 is amended to read:

7 **Sec. 08.26.100. Court appointment.** **An individual** [A PERSON] who
 8 engages in the business of providing services as a **private** guardian or conservator
 9 may not be appointed **as** a guardian or a conservator in a court proceeding unless the
 10 **individual** [PERSON] is licensed under this chapter or exempt under AS 08.26.180.

11 * **Sec. 8.** AS 08.26.130 is amended to read:

12 **Sec. 08.26.130. Grounds for disciplinary action.** The department may take
 13 disciplinary action against **an individual** [A PERSON] under AS 08.01.075 **or refuse**
 14 **to issue or renew a license** if the department determines that the **individual**
 15 [PERSON]

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

18 (2) has not complied with the standards of conduct established by the
 19 department under AS 13.26.001;

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

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

24 (5) has advertised **the individual's** [ITS] services in a false or
 25 misleading manner;

26 (6) has been convicted, including a conviction based on a guilty plea or
 27 plea of nolo contendere, of a felony or other crime that affects the **individual's**
 28 [PERSON'S] ability to provide [THE LICENSEE'S] services competently and safely
 29 for the ward or protected person;

30 (7) has been found to have abandoned, exploited, abused, or neglected
 31 a vulnerable adult; in this paragraph, "vulnerable adult" has the meaning given in

1 AS 47.24.900;

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

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

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

8 (A) guardianships, if the **individual** [PERSON] was issued **a**
9 [AN INDIVIDUAL] private professional guardian license; or

10 (B) conservatorships, if the individual was issued **a** [AN
11 INDIVIDUAL] private professional conservator license; **or**

12 (11) is not able to be bonded and insured [; OR

13 (12) IF THE LICENSEE HAS AN ORGANIZATIONAL LICENSE,

14 (A) DOES NOT MAINTAIN A PLACE OF BUSINESS IN
15 THIS STATE;

16 (B) IS NOT IN COMPLIANCE WITH THE STATE AND
17 FEDERAL REQUIREMENTS THAT APPLY TO THE ORGANIZATION;
18 OR

19 (C) HAS AN EMPLOYEE WHO PROVIDES THE
20 SERVICES OF A PRIVATE PROFESSIONAL GUARDIAN OR PRIVATE
21 PROFESSIONAL CONSERVATOR FOR THE ORGANIZATION AND IS
22 NOT LICENSED UNDER THIS CHAPTER].

23 * **Sec. 9.** AS 08.26.180 is amended to read:

24 **Sec. 08.26.180. Exemption. An individual who is employed by a** [A]
25 financial institution regulated by the federal government or a financial institution
26 regulated under AS 06 by the department is not required to be licensed under this
27 chapter in order to engage, **in the course of the individual's employment by the**
28 **financial institution,** in the business of providing services as a guardian or a
29 conservator or be appointed as a private professional guardian or a private professional
30 conservator by a court. In this subsection, "financial institution" does not include a
31 person who is exempt under AS 06.26.020 or who has received an exemption under

1 AS 06.26.200.

2 * **Sec. 10.** AS 08.26.190 is amended to read:

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

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

5 (2) "department" means the Department of Commerce, Community,
6 and Economic Development;

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

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

9 (5) ["ORGANIZATIONAL LICENSE" MEANS A LICENSE
10 ISSUED UNDER AS 08.26.040;

11 (6) "private professional conservator" means **an individual** [A
12 PERSON] who acts as a conservator under AS 13.26.165 - 13.26.320 and receives
13 compensation for acting in that capacity **for an individual who is not an immediate**
14 **family member of the conservator;**

15 **(6)** [(7)] "private professional conservator license" means a license
16 issued under AS 08.26.030;

17 **(7)** [(8)] "private professional guardian" means **an individual** [A
18 PERSON] who acts as a guardian under AS 13.26.030 - 13.26.155 and receives
19 compensation for acting in that capacity **for an individual who is not an immediate**
20 **family member of the guardian;**

21 **(8)** [(9)] "private professional guardian license" means a license issued
22 under AS 08.26.020;

23 **(9)** [(10)] "protected person" has the meaning given in AS 13.26.005;

24 **(10)** [(11)] "ward" has the meaning given in AS 13.26.005.

25 * **Sec. 11.** AS 13.26.400 is amended to read:

26 **Sec. 13.26.400. Staff; delegation of powers and duties.** The public
27 guardian may employ staff and delegate to members of the staff or to volunteers the
28 powers and duties as guardian or conservator and other powers and duties under this
29 chapter. However, the public guardian retains responsibility for the proper
30 performance of the delegated powers and duties. **The public guardian may only**
31 **delegate powers and duties under this chapter to an individual who meets** [ALL

1 DELEGATIONS SHALL BE TO PERSONS WHO MEET] the eligibility
2 requirements of AS 13.26.145 and has passed the criminal history record
3 information check under AS 08.26.070. In addition, the individual must either
4 hold a current certification as a guardian from a nationally recognized
5 organization at the time of the delegation or apply for and receive that
6 certification within one year of the delegation.

7 * **Sec. 12.** AS 08.26.040 is repealed.

8 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 APPLICABILITY. A person who is not an individual who has a current organizational
11 license issued by the department under AS 08.26.040 may continue to provide guardianship
12 and conservatorship services under the requirements of AS 08.26 until the license expires.
13 Each individual performing guardianship or conservatorship services under an organizational
14 license must apply for and receive an individual license issued under AS 08.26 within 60 days
15 after the expiration of the license in order to continue to provide guardianship or
16 conservatorship services.