

CS FOR SENATE BILL NO. 101(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 3/14/07

Referred: State Affairs, Finance

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

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
5 DEPARTMENT THAT THE INDIVIDUAL IS ABLE TO BE BONDED AND
6 INSURED;

7 (5)] whose criminal history record checks under AS 08.26.070 show
8 that the individual has not been convicted of a **felony or of a misdemeanor offense in**
9 **the state or in any other jurisdiction involving fraud, misrepresentation, material**
10 **omission, misappropriation, theft, conversion, or any other crime the department**
11 **determines would affect the individual's ability to provide the services of a**
12 **guardian competently and safely for the protected person** [CRIME] within 10
13 years **before** [OF] the application; [THAT WOULD AFFECT THE INDIVIDUAL'S
14 ABILITY TO PROVIDE THE SERVICES OF A GUARDIAN COMPETENTLY
15 AND SAFELY FOR THE WARD; AND]

16 **(5)** [(6)] who satisfies the application requirements of AS 08.26.060;
17 **and**

18 **(6) who satisfies the requirements for obtaining a private**
19 **professional conservator license under AS 08.26.030.**

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

21 (b) The department shall issue a private professional partial guardian license
22 to an individual who satisfies the requirements under (a)(1) - (5) of this section. A
23 licensed private professional partial guardian may not perform conservator services.

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

25 **Sec. 08.26.030. Requirements for [INDIVIDUAL] private professional**
26 **conservator license.** The department shall issue **a** [AN INDIVIDUAL] private
27 professional conservator license to an individual

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

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

31 (3) who has six months' employment experience in a position

1 involving financial management, or has at least an associate degree in accounting or a
2 closely related field;

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

5 (5) [WHO PROVIDES PROOF SATISFACTORY TO THE
6 DEPARTMENT THAT THE INDIVIDUAL IS ABLE TO BE BONDED AND
7 INSURED;

8 (6) whose criminal history record checks under AS 08.26.070 show
9 that the **individual** [PERSON] has not been convicted of a **felony or of a**
10 **misdeemeanor offense in the state or in any other jurisdiction involving fraud,**
11 **misrepresentation, material omission, misappropriation, theft, conversion, or any**
12 **other crime that the department determines would affect the individual's ability**
13 **to provide the services of a conservator competently and safely for the protected**
14 **person** [CRIME] within 10 years before the application [THAT WOULD AFFECT
15 THE INDIVIDUAL'S ABILITY TO PROVIDE THE SERVICES OF A
16 CONSERVATOR COMPETENTLY AND SAFELY FOR THE PROTECTED
17 PERSON]; and

18 **(6)** [(7)] who satisfies the application requirements of AS 08.26.060.

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

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

23 (1) two complete fingerprint cards containing fingerprints and other
24 information required by the Department of Public Safety to obtain state and national
25 criminal history record information under AS 12.62 and AS 12.64; [THE
26 FINGERPRINTS MUST BE THE FINGERPRINTS OF THE APPLICANT IF THE
27 APPLICANT IS AN INDIVIDUAL, OR, IF THE APPLICANT IS AN
28 ORGANIZATION, FINGERPRINTS OF THE

29 (A) OFFICERS OF THE ORGANIZATION, IF THE
30 APPLICANT IS A CORPORATION;

31 (B) MEMBERS OF THE ORGANIZATION, IF THE

1 APPLICANT IS A LIMITED LIABILITY COMPANY;

2 (C) PARTNERS OF THE ORGANIZATION, IF THE
3 APPLICANT IS A PARTNERSHIP;]

4 (2) [PROOF THE ABILITY TO BE INSURED AND BONDED;

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

10 (3) [(4)] a written statement signed by the applicant that the applicant
11 will allow immediate access at any time to the department to the file of a ward or
12 protected person and to financial information regarding the applicant, including
13 corporate or other business records;

14 (4) [(5)] a detailed resume, including relevant experience, for each
15 employee and contractor of the applicant who may provide services to a ward or
16 protected person; **and**

17 (5) [(6)] payment of the application fee, any criminal history record
18 information checks fee charged under AS 12.62.160(d), and any other fees required by
19 the department [; AND

20 (7) IF THE APPLICANT IS NOT AN INDIVIDUAL, A COPY OF
21 THE DOCUMENTS UNDER WHICH THE APPLICANT WAS FORMED,
22 INCLUDING ARTICLES OF INCORPORATION AND BYLAWS IF THE
23 APPLICANT IS A CORPORATION].

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

25 **Sec. 08.26.080. Annual report.** Within 30 days following the end of each
26 calendar year, a licensee shall submit to the **office of public advocacy, Department**
27 **of Administration** [DEPARTMENT]

28 (1) evidence of the [INITIAL AND] continuing existence of a **court**
29 **ordered** bond, **if any,** [AND PROFESSIONAL LIABILITY INSURANCE] required
30 by a court to be maintained by the guardian or conservator;

31 (2) a list, including case numbers, of the wards and protected persons

1 for whom the licensee is acting as a private professional guardian or private
2 professional conservator;

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

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

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

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

13 * **Sec. 7.** AS 08.26.080 is amended by adding a new subsection to read:

14 (b) The office of public advocacy shall notify the department of the licensee's
15 compliance with (a) of this section.

16 * **Sec. 8.** AS 08.26.100 is amended to read:

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

21 * **Sec. 9.** AS 08.26.130 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (A) DOES NOT MAINTAIN A PLACE OF BUSINESS IN
25 THIS STATE;

26 (B) IS NOT IN COMPLIANCE WITH THE STATE AND
27 FEDERAL REQUIREMENTS THAT APPLY TO THE ORGANIZATION;
28 OR

29 (C) HAS AN EMPLOYEE WHO PROVIDES THE
30 SERVICES OF A PRIVATE PROFESSIONAL GUARDIAN OR PRIVATE
31 PROFESSIONAL CONSERVATOR FOR THE ORGANIZATION AND IS

1 NOT LICENSED UNDER THIS CHAPTER].

2 * **Sec. 10.** AS 08.26.180 is amended to read:

3 **Sec. 08.26.180. Exemption.** An individual who is employed by a [A]
 4 financial institution regulated by the federal government or a financial institution
 5 regulated under AS 06 by the department is not required to be licensed under this
 6 chapter in order to engage, in the course of the individual's employment by the
 7 financial institution, in the business of providing services as a guardian or a
 8 conservator or be appointed as a private professional guardian or a private professional
 9 conservator by a court. In this **section** [SUBSECTION], "financial institution" does
 10 not include a person who is exempt under AS 06.26.020 or who has received an
 11 exemption under AS 06.26.200.

12 * **Sec. 11.** AS 08.26.190 is amended to read:

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

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

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

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

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

19 (5) ["ORGANIZATIONAL LICENSE" MEANS A LICENSE
 20 ISSUED UNDER AS 08.26.040;

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

25 ~~(6)~~ [(7)] "private professional conservator license" means a license
 26 issued under AS 08.26.030;

27 ~~(7)~~ [(8)] "private professional guardian" means an individual [A
 28 PERSON] who acts as a guardian under AS 13.26.030 - 13.26.155 and receives
 29 compensation for acting in that capacity for an individual who is not an immediate
 30 family member of the guardian;

31 ~~(8)~~ [(9)] "private professional guardian license" means a license issued

1 under AS 08.26.020;

2 (9) [(10)] "protected person" has the meaning given in AS 13.26.005;

3 (10) [(11)] "ward" has the meaning given in AS 13.26.005.

4 * **Sec. 12.** AS 13.26.400 is amended to read:

5 **Sec. 13.26.400. Staff; delegation of powers and duties.** The public guardian
6 may employ staff and delegate to members of the staff or to volunteers the powers and
7 duties as guardian or conservator and other powers and duties under this chapter.
8 However, the public guardian retains responsibility for the proper performance of the
9 delegated powers and duties. **The public guardian may only delegate powers and**
10 **duties under this chapter to an individual who meets** [ALL DELEGATIONS
11 SHALL BE TO PERSONS WHO MEET] the eligibility requirements of
12 AS 13.26.145 **and has passed the criminal history record information check**
13 **under AS 08.26.070. In addition, the individual must either hold a current**
14 **certification as a guardian from a nationally recognized organization at the time**
15 **of the delegation or apply for and receive that certification within one year of the**
16 **delegation.**

17 * **Sec. 13.** AS 08.26.040 is repealed.

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

20 TRANSITION. A person who is not an individual who, on the effective date of this
21 Act, has a current organizational license issued by the Department of Commerce, Community,
22 and Economic Development under AS 08.26.040 may continue to provide guardianship and
23 conservatorship services under the requirements of AS 08.26 until the license expires. Each
24 individual who, on the effective date of this Act, performs guardianship or conservatorship
25 services under a current organizational license must apply for and receive an individual
26 license issued under AS 08.26 within 60 days after the expiration of the organizational license
27 in order to continue to provide guardianship or conservatorship services.