

CS FOR SENATE BILL NO. 101(2d L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 1/28/08

Referred: Finance

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to private professional conservators, private and public guardians, and**
2 **court hearings on the issue of incapacity; and establishing uniform adult guardianship**
3 **and conservator jurisdiction and procedures."**

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

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

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

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

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

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

14 (2) who has two or more years of professional client casework

1 experience or at least an associate degree in human services, social work, psychology,
2 sociology, gerontology, special education, or a closely related field;

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

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

8 (5)] whose criminal history record checks under AS 08.26.070 show
9 that the individual has not been convicted of a **felony or of a misdemeanor offense in**
10 **the state or in any other jurisdiction involving fraud, misrepresentation, material**
11 **omission, misappropriation, theft, conversion, or any other crime the department**
12 **determines would affect the individual's ability to provide the services of a**
13 **guardian competently and safely for the protected person** [CRIME] within 10
14 years **before** [OF] the application;

15 (5) [THAT WOULD AFFECT THE INDIVIDUAL'S ABILITY TO
16 PROVIDE THE SERVICES OF A GUARDIAN COMPETENTLY AND SAFELY
17 FOR THE WARD; AND (6)] who satisfies the application requirements of
18 AS 08.26.060; **and**

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

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

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

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

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

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

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

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

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

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

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

19 **(6)** [(7)] who satisfies the application requirements of AS 08.26.060.

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

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

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

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

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

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

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

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

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

15 (4) [(5) A DETAILED RESUME, INCLUDING RELEVANT
16 EXPERIENCE, FOR EACH EMPLOYEE AND CONTRACTOR OF THE
17 APPLICANT WHO MAY PROVIDE SERVICES TO A WARD OR PROTECTED
18 PERSON;

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

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

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

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

30 (1) evidence of the [INITIAL AND] continuing existence of a **court**
31 **ordered** bond, **if any,** [AND PROFESSIONAL LIABILITY INSURANCE] required

1 by a court to be maintained by the guardian or conservator;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (11) **fails to maintain a bond or other surety as required by a court**
25 **order** [IS NOT ABLE TO BE BONDED AND INSURED; OR

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

27 (A) DOES NOT MAINTAIN A PLACE OF BUSINESS IN
28 THIS STATE;

29 (B) IS NOT IN COMPLIANCE WITH THE STATE AND
30 FEDERAL REQUIREMENTS THAT APPLY TO THE ORGANIZATION;

31 OR

1 (C) HAS AN EMPLOYEE WHO PROVIDES THE
 2 SERVICES OF A PRIVATE PROFESSIONAL GUARDIAN OR PRIVATE
 3 PROFESSIONAL CONSERVATOR FOR THE ORGANIZATION AND IS
 4 NOT LICENSED UNDER THIS CHAPTER].

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

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

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

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

- 17 (1) "conservator" has the meaning given in AS 13.06.050;
- 18 (2) "department" means the Department of Commerce, Community,
 19 and Economic Development;
- 20 (3) "guardian" has the meaning given in AS 13.06.050;
- 21 (4) "licensee" means a person licensed under this chapter;
- 22 (5) ["ORGANIZATIONAL LICENSE" MEANS A LICENSE
 23 ISSUED UNDER AS 08.26.040;
- 24 (6) "private professional conservator" means an individual [A
 25 PERSON] who acts as a conservator under AS 13.26.165 - 13.26.320 and receives
 26 compensation for acting in that capacity for an individual who is not an immediate
 27 family member of the conservator;
- 28 ~~(6)~~ [(7)] "private professional conservator license" means a license
 29 issued under AS 08.26.030;
- 30 ~~(7)~~ [(8)] "private professional guardian" means an individual [A
 31 PERSON] who acts as a guardian under AS 13.26.030 - 13.26.150 [AS 13.26.030 -

1 13.26.155] and receives compensation for acting in that capacity **for an individual**
 2 **who is not an immediate family member of the guardian;**

3 **(8)** [(9)] "private professional guardian license" means a license issued
 4 under AS 08.26.020;

5 **(9)** [(10)] "protected person" has the meaning given in AS 13.26.005;

6 **(10)** [(11)] "ward" has the meaning given in AS 13.26.005.

7 * **Sec. 12.** AS 13.26.010 is amended by adding a new subsection to read:

8 (c) This section is subject to the requirements of AS 13.27 (Uniform Adult
 9 Guardianship and Protective Proceedings Jurisdiction Act).

10 * **Sec. 13.** AS 13.26.095(d) is amended to read:

11 (d) On the filing with the court in which the will was probated of written
 12 objection to the appointment by the person for whom a testamentary appointment of
 13 guardian has been made, the appointment is terminated. An objection does not prevent
 14 appointment by the court in a proper proceeding of the testamentary nominee or any
 15 other suitable person upon an adjudication of incapacity in proceedings under
 16 **AS 13.26.100 - 13.26.150** [AS 13.26.100 - 13.26.155].

17 * **Sec. 14.** AS 13.26.109(b) is amended to read:

18 (b) Statements of a ward or respondent in the course of evaluations,
 19 examinations, and treatment under **AS 13.26.090 - 13.26.150** [AS 13.26.090 -
 20 13.26.155] are privileged, confidential, and not admissible without the ward's or
 21 respondent's consent in any civil or criminal proceeding other than proceedings under
 22 **AS 13.26.090 - 13.26.150** [AS 13.26.090 - 13.26.155]. A ward or respondent at all
 23 times has the right to refuse to answer questions if the answers may tend to incriminate
 24 the ward or respondent.

25 * **Sec. 15.** AS 13.26.109(c) is amended to read:

26 (c) During an interview or a testing conducted under **AS 13.26.090 -**
 27 **13.26.150** [AS 13.26.090 - 13.26.155], a ward or respondent has the right to be
 28 accompanied by an attorney or expert of the ward's or respondent's own choosing.

29 * **Sec. 16.** AS 13.26.109(d) is amended to read:

30 (d) The court, if requested by a ward or respondent in preparation for and in
 31 connection with a hearing held under **AS 13.26.090 - 13.26.150** [AS 13.26.090 -

1 13.26.155], shall appoint an expert having expertise in regard to the alleged or
 2 admitted incapacity to examine the respondent and testify on the respondent's behalf.
 3 The request shall be filed in court at least five days before the hearing. An expert
 4 appointed under this subsection may be the same expert appointed under
 5 AS 13.26.106(c).

6 * **Sec. 17.** AS 13.26.113(b) is amended to read:

7 (b) The burden of proof by clear and convincing evidence is upon the
 8 petitioner, and a determination of incapacity shall be made before
 9 consideration of proper disposition. **If the respondent stipulates to**
 10 **incapacity, the court may make a finding of incapacity without obtaining**
 11 **evidence from the expert appointed under AS 13.26.106(c).**

12 * **Sec. 18.** AS 13.26.145(f) is amended to read:

13 (f) When in the best interest of the incapacitated person, a court may
 14 decline to appoint a person who has priority under (d) of this section as
 15 guardian of an incapacitated person and may appoint as guardian a person who
 16 has a lower priority than another person or who does not have a priority. **If the**
 17 **court appoints a person with a lower priority under (d) of this section than**
 18 **another person, the court shall make appropriate written findings related**
 19 **to why the best interests of the respondent require appointment of the**
 20 **person with a lower priority.**

21 * **Sec. 19.** AS 13.26.170 is amended to read:

22 **Sec. 13.26.170. Protective proceedings; jurisdiction of affairs of protected**
 23 **persons. Except as otherwise provided under AS 13.27.110, after** [AFTER] the
 24 service of notice in a proceeding seeking the appointment of a conservator or other
 25 protective order and until termination of the proceeding, the court in which the petition
 26 is filed has

27 [(1)] exclusive jurisdiction to determine

28 **(1)** the need for a conservator or other protective order until the
 29 proceedings are terminated; **and**

30 (2) [EXCLUSIVE JURISDICTION TO DETERMINE] how the estate
 31 of the protected person **that** [WHICH] is subject to the laws of this state shall be

1 managed, expended, or distributed to or for the use of the protected person or any of
2 the person's dependents [;

3 (3) CONCURRENT JURISDICTION TO DETERMINE THE
4 VALIDITY OF CLAIMS AGAINST THE PERSON OR ESTATE OF THE
5 PROTECTED PERSON AND THE PERSON'S TITLE TO ANY PROPERTY OR
6 CLAIM].

7 * **Sec. 20.** AS 13.26.210(f) is amended to read:

8 (f) When in the best interest of the protected person, a court may decline to
9 appoint a person who has priority under (d) of this section as conservator of the
10 protected person and may appoint as conservator a person who has a lower priority
11 than another person or who does not have a priority. **If the court appoints a person**
12 **with a lower priority under (d) of this section than another person, the court shall**
13 **make appropriate written findings related to why the best interests of the**
14 **respondent require appointment of the person with a lower priority.**

15 * **Sec. 21.** AS 13.26.380 is amended by adding a new subsection to read:

16 (e) The records required to be kept and maintained under (c)(3) of this section
17 are confidential and are not subject to inspection or copying under AS 40.25.110 -
18 40.25.120 unless the records are relevant to an investigation or proceeding involving
19 the public guardian or a case in which the public guardian provided guardianship or
20 conservatorship services.

21 * **Sec. 22.** AS 13.26.400 is amended to read:

22 **Sec. 13.26.400. Staff; delegation of powers and duties.** The public guardian
23 may employ staff and delegate to members of the staff or to volunteers the powers and
24 duties as guardian or conservator and other powers and duties under this chapter.
25 However, the public guardian retains responsibility for the proper performance of the
26 delegated powers and duties. **The public guardian may only delegate powers and**
27 **duties under this chapter to an individual who meets** [ALL DELEGATIONS
28 SHALL BE TO PERSONS WHO MEET] the eligibility requirements of
29 AS 13.26.145 **and has passed the criminal history record information check**
30 **under AS 08.26.070. In addition, the individual must either hold a current**
31 **certification as a guardian from a nationally recognized organization at the time**

1 **of the delegation or apply for and receive that certification within one year of the**
 2 **delegation.**

3 * **Sec. 23.** AS 13.26.410(e) is amended to read:

4 (e) **Before the office of public advocacy releases a ward's funds following**
 5 **the termination of the public guardian's appointment, the office may collect from**
 6 **the ward's funds held by the office the** [THE] reasonable value of the services
 7 rendered without cost to the ward or protected person [SHALL BE ALLOWED AS A
 8 CLAIM AGAINST THE ESTATE UPON THE DEATH OF THE WARD OR
 9 PROTECTED PERSON].

10 * **Sec. 24.** AS 13 is amended by adding a new chapter to read:

11 **Chapter 27. Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.**

12 **Article 1. Application; Cooperation between Courts.**

13 **Sec. 13.27.010. International application of this chapter.** A court of this
 14 state may treat a foreign country as if it were a state for the purpose of applying
 15 AS 13.27.010 - 13.27.210, 13.27.400, 13.27.410, and 13.27.490.

16 **Sec. 13.27.020. Communication between courts.** (a) A court of this state may
 17 communicate with a court in another state concerning a proceeding arising under this
 18 chapter. The court may allow the parties to participate in the communication. Except
 19 as otherwise provided in (b) of this section, the court shall make a record of the
 20 communication.

21 (b) Courts may communicate concerning administrative matters that involve
 22 schedules, calendars, and court records without making a record.

23 **Sec. 13.27.030. Cooperation between courts.** (a) In a guardianship or
 24 protective proceeding in this state, a court may request the appropriate court of another
 25 state to

26 (1) hold an evidentiary hearing;

27 (2) order a person in that state to produce evidence or give testimony
 28 under procedures of that state;

29 (3) order that an evaluation or assessment be made of the respondent;

30 (4) order any appropriate investigation of a person involved in a
 31 proceeding;

1 (5) forward to the court a certified copy of the transcript or other
 2 record of a hearing under (1) of this subsection or any other proceeding, any evidence
 3 otherwise produced under (2) of this subsection, and any evaluation or assessment
 4 prepared in compliance with an order under (3) or (4) of this subsection;

5 (6) issue any order necessary to assure the appearance in the
 6 proceeding of a person whose presence is necessary for the court to make a
 7 determination, including the respondent or the incapacitated or protected person;

8 (7) issue an order authorizing the release of medical, financial,
 9 criminal, or other relevant information in that state, including protected health
 10 information as defined in 45 CFR 164.504, as amended.

11 (b) If a court of another state in which a guardianship or protective proceeding
 12 is pending requests assistance of the kind provided in (a) of this section, a court of this
 13 state has jurisdiction for the limited purpose of granting the request or making
 14 reasonable efforts to comply with the request.

15 **Sec. 13.27.040. Taking testimony in another state.** (a) In a guardianship or
 16 protective proceeding, in addition to other procedures that may be available, testimony
 17 of a witness who is located in another state may be offered by deposition or other
 18 means allowable in this state for testimony taken in another state. The court on its own
 19 motion may request that the testimony of a witness be taken in another state and may
 20 prescribe the manner in which and the terms on which the testimony is to be taken.

21 (b) In a guardianship or protective proceeding, a court in this state may permit
 22 a witness located in another state to be deposed or to testify by telephone or
 23 audiovisual or other electronic means. A court of this state shall cooperate with the
 24 court of the other states in designating an appropriate location for the deposition or
 25 testimony.

26 **Article 2. Jurisdiction.**

27 **Sec. 13.27.100. Exclusive basis.** AS 13.27.100 - 13.27.180 provide the
 28 exclusive basis for subject matter jurisdiction for a court of this state to appoint a
 29 guardian or issue a protective order for an adult.

30 **Sec. 13.27.110. Jurisdiction.** A court of this state has jurisdiction to appoint a
 31 guardian or issue a protective order for a respondent if

1 (1) this state is the respondent's home state;
 2 (2) on the date the petition is filed, this state is a significant-connection
 3 state, and

4 (A) the respondent does not have a home state or a court of the
 5 respondent's home state has declined to exercise jurisdiction because this state
 6 is a more appropriate forum; or

7 (B) the respondent has a home state, a petition for an
 8 appointment or order is not pending in a court of that state or another
 9 significant-connection state, and, before the court makes an appointment or
 10 issues an order,

11 (i) a petition for an appointment or order is not filed in
 12 the respondent's home state;

13 (ii) an objection to the court's jurisdiction is not filed by
 14 a person required to be notified of the proceeding; and

15 (iii) the court in this state concludes that it is an
 16 appropriate forum under the factors set out in AS 13.27.140;

17 (3) this state does not have jurisdiction under either (1) or (2) of this
 18 section and the respondent's home state and all significant-connection states have
 19 declined to exercise jurisdiction under AS 13.27.140 because

20 (A) this state is the more appropriate forum; and

21 (B) jurisdiction in this state is consistent with the constitutions
 22 of this state and the United States; or

23 (4) the requirements for special jurisdiction under AS 13.27.120 are
 24 met.

25 **Sec. 13.27.120. Special jurisdiction.** (a) A court of this state lacking
 26 jurisdiction under AS 13.27.110 has special jurisdiction to

27 (1) appoint a guardian in an emergency for a term not exceeding 90
 28 days for a respondent who is physically present in this state;

29 (2) issue a protective order with respect to real or tangible personal
 30 property located in this state;

31 (3) appoint a guardian or conservator for an incapacitated or protected

1 person for whom a provisional order to transfer the proceeding from another state has
2 been issued under procedures similar to AS 13.27.200.

3 (b) If a petition for the appointment of a guardian in an emergency is brought
4 in this state and this state was not the respondent's home state on the date the petition
5 was filed, the court shall dismiss the proceeding at the request of the court of the home
6 state, if any, whether dismissal is requested before or after the emergency
7 appointment.

8 **Sec. 13.27.130. Exclusive and continuing jurisdiction.** Except as otherwise
9 provided in AS 13.27.120, a court that has appointed a guardian or issued a protective
10 order consistent with this chapter has exclusive and continuing jurisdiction over the
11 proceeding until it is terminated by the court or the appointment or order expires by its
12 own terms.

13 **Sec. 13.27.140. Appropriate forum.** (a) A court of this state having
14 jurisdiction under AS 13.27.110 to appoint a guardian or issue a protective order may
15 decline to exercise its jurisdiction if it determines at any time that a court of another
16 state is a more appropriate forum.

17 (b) If a court of this state declines to exercise its jurisdiction under (a) of this
18 section, it shall either dismiss or stay the proceeding. The court may impose any
19 condition the court considers just and proper, including the condition that a petition for
20 the appointment of a guardian or issuance of a protective order be filed promptly in
21 another state.

22 (c) In determining whether it is an appropriate forum, the court shall consider
23 all relevant factors, including

- 24 (1) any expressed preference of the respondent;
- 25 (2) whether abuse, neglect, or exploitation of the respondent has
26 occurred or is likely to occur and which state could best protect the respondent from
27 the abuse, neglect, or exploitation;
- 28 (3) the length of time the respondent was physically present in or was a
29 legal resident of this or another state;
- 30 (4) the distance of the respondent from the court in each state;
- 31 (5) the financial circumstances of the respondent's estate;

- 1 (6) the nature and location of the evidence;
- 2 (7) the ability of the court in each state to decide the issue
- 3 expeditiously and the procedures necessary to present evidence;
- 4 (8) the familiarity of the court of each state with the facts and issues in
- 5 the proceeding; and
- 6 (9) if an appointment were made, the court's ability to monitor the
- 7 conduct of the guardian or conservator.

8 **Sec. 13.27.150. Jurisdiction declined by reason of conduct.** (a) If at any time

9 a court of this state determines that it acquired jurisdiction to appoint a guardian or

10 issue a protective order because of unjustifiable conduct, the court may

- 11 (1) decline to exercise jurisdiction;
- 12 (2) exercise jurisdiction for the limited purpose of fashioning an
- 13 appropriate remedy to ensure the health, safety, and welfare of the respondent or the
- 14 protection of the respondent's property or prevent a repetition of the unjustifiable
- 15 conduct; the exercise of limited jurisdiction under this paragraph may include staying
- 16 the proceeding until a petition for the appointment of a guardian or issuance of a
- 17 protective order is filed in a court of another state having jurisdiction; or

- 18 (3) continue to exercise jurisdiction after considering
- 19 (A) the extent to which the respondent and all persons required
- 20 to be notified of the proceedings have acquiesced in the exercise of the court's
- 21 jurisdiction;
- 22 (B) whether it is a more appropriate forum than the court of any
- 23 other state under the factors set out in AS 13.27.140(c); and
- 24 (C) whether the court of any other state would have jurisdiction
- 25 under factual circumstances in substantial conformity with the jurisdictional
- 26 standards of AS 13.27.110.

27 (b) If a court of this state determines that it acquired jurisdiction to appoint a

28 guardian or issue a protective order because a party seeking to invoke its jurisdiction

29 engaged in unjustifiable conduct, it may assess against that party necessary and

30 reasonable expenses, including attorney fees, investigative fees, court costs,

31 communication expenses, witness fees and expenses, and travel expenses. The court

1 may not assess fees, costs, or expenses of any kind against this state or a governmental
 2 subdivision, agency, or instrumentality of this state unless authorized by law other
 3 than this chapter.

4 **Sec. 13.27.160. Notice of proceeding.** If a petition for the appointment of a
 5 guardian or issuance of a protective order is brought in this state and this state was not
 6 the respondent's home state on the date the petition was filed, in addition to complying
 7 with the notice requirements of this state, notice of the petition must be given to those
 8 persons who would be entitled to notice of the petition if a proceeding were brought in
 9 the respondent's home state. The notice must be given in the same manner as notice is
 10 required to be given in this state.

11 **Sec. 13.27.170. Proceedings in more than one state.** Except for a petition for
 12 the appointment of a guardian in an emergency or issuance of a protective order
 13 limited to property located in this state under AS 13.27.120(a)(1) or (2), if a petition
 14 for the appointment of a guardian or issuance of a protective order is filed in this state
 15 and in another state and neither petition has been dismissed or withdrawn, the
 16 following rules apply:

17 (1) if the court in this state has jurisdiction under AS 13.27.110, it may
 18 proceed with the case unless a court in another state acquires jurisdiction under
 19 provisions similar to AS 13.27.110 before the appointment or issuance of the order;

20 (2) if the court in this state does not have jurisdiction under
 21 AS 13.27.110, whether at the time the petition is filed or at any time before the
 22 appointment or issuance of the order, the court shall stay the proceeding and
 23 communicate with the court in the other state; if the court in the other state has
 24 jurisdiction, the court in this state shall dismiss the petition unless the court in the
 25 other state determines that the court in this state is a more appropriate forum.

26 **Sec. 13.27.180. Definitions for AS 13.27.100 - 13.27.180.** In AS 13.27.100 -
 27 13.27.180,

28 (1) "emergency" means a circumstance that likely will result in
 29 substantial harm to a respondent's health, safety, or welfare, and for which the
 30 appointment of a guardian is necessary because no other person has authority and is
 31 willing to act on the respondent's behalf;

1 (2) "home state" means the state in which the respondent was
2 physically present, including any period of temporary absence, for at least six
3 consecutive months immediately before the filing of a petition for a protective order or
4 the appointment of a guardian; or, if none, the state in which the respondent was
5 physically present, including any period of temporary absence, for at least six
6 consecutive months ending with the six months before the filing of the petition;

7 (3) "significant-connection state" means a state, other than the home
8 state, with which a respondent has a significant connection other than mere physical
9 presence and in which substantial evidence concerning the respondent is available; in
10 determining whether a respondent has a significant connection with a particular state,
11 the court shall consider

12 (A) the location of the respondent's family and others required
13 to be notified of the guardianship or protective proceeding;

14 (B) the length of time the respondent at any time was
15 physically present in the state and the duration of any absences;

16 (C) the location of the respondent's property; and

17 (D) the extent to which the respondent has other ties to the state
18 such as voting registration, filing of state or local tax returns, vehicle
19 registration, driver's license, social relationships, and receipt of services.

20 **Article 3. Transfer of Guardianship or Conservatorship.**

21 **Sec. 13.27.200. Petition to transfer guardianship or conservatorship to**
22 **another state.** (a) A guardian or conservator appointed in this state may petition the
23 court to transfer the guardianship or conservatorship to another state.

24 (b) Notice of a petition to transfer a guardianship or conservatorship under (a)
25 of this section must be given to the persons who would be entitled to notice of a
26 petition in this state for the appointment of a guardian or conservator.

27 (c) On the court's own motion or on request of the guardian or conservator, the
28 incapacitated or protected person, or other person required to be notified of the
29 petition, the court shall hold a hearing on a petition filed under (a) of this section.

30 (d) The court shall issue an order provisionally granting a petition to transfer a
31 guardianship and shall direct the guardian to petition for guardianship in the other state

1 if the court is satisfied that the guardianship will be accepted by the court in the other
2 state and the court finds that

3 (1) the incapacitated person is physically present in or is reasonably
4 expected to move permanently to the other state;

5 (2) an objection to the transfer has not been made or, if an objection
6 has been made, the objector has not established that the transfer would be contrary to
7 the interests of the incapacitated person; and

8 (3) plans for care and services for the incapacitated person in the other
9 state are reasonable and sufficient.

10 (e) The court shall issue a provisional order granting a petition to transfer a
11 conservatorship and shall direct the conservator to petition for conservatorship in the
12 other state if the court is satisfied that the conservatorship will be accepted by the
13 court of the other state and the court finds that

14 (1) the protected person is physically present in or is reasonably
15 expected to move permanently to the other state, or the protected person has a
16 significant connection to the other state considering the factors set out in
17 AS 13.27.180(3);

18 (2) an objection to the transfer has not been made or, if an objection
19 has been made, the objector has not established that the transfer would be contrary to
20 the interests of the protected person; and

21 (3) adequate arrangements will be made for management of the
22 protected person's property.

23 (f) The court shall issue a final order confirming the transfer and terminating
24 the guardianship or conservatorship if the court receives

25 (1) a provisional order issued under provisions similar to AS 13.27.210
26 accepting the proceeding from the court to which the proceeding is to be transferred;
27 and

28 (2) the documents required to terminate a guardianship or
29 conservatorship in this state.

30 **Sec. 13.27.210. Accepting guardianship or conservatorship transferred**
31 **from another state.** (a) To confirm transfer of a guardianship or conservatorship

1 transferred to this state under provisions similar to those in AS 13.27.200, the guardian
2 or conservator must petition the court in this state to accept the guardianship or
3 conservatorship. The petition must include a certified copy of the other state's
4 provisional order of transfer.

5 (b) Notice of a petition under (a) of this section must be given to those persons
6 that would be entitled to notice if the petition were a petition for the appointment of a
7 guardian or issuance of a protective order in both the transferring state and this state.
8 The notice must be given in the same manner as notice is required to be given in this
9 state.

10 (c) On the court's own motion or on request of the guardian or conservator, the
11 incapacitated or protected person, or other person required to be notified of the
12 proceeding, the court may hold a hearing on a petition filed under (a) of this section.

13 (d) The court shall issue a provisional order granting a petition filed under (a)
14 of this section unless

15 (1) an objection is made and the objector establishes that transfer of the
16 proceeding would be contrary to the interests of the incapacitated or protected person;
17 or

18 (2) the guardian or conservator is ineligible for an appointment in this
19 state.

20 (e) The court shall issue a final order accepting the proceeding and appointing
21 the guardian or conservator as guardian or conservator in this state on its receipt from
22 the court from which the proceeding is being transferred of a final order issued under
23 provisions similar to AS 13.27.200 transferring the proceeding to this state.

24 (f) Not later than 90 days after issuance of a final order accepting transfer of a
25 guardianship or conservatorship, the court shall determine whether the guardianship or
26 conservatorship needs to be modified to conform to the law of this state.

27 (g) In granting a petition under this section, the court shall recognize a
28 guardianship or conservatorship order from the other state, including the determination
29 of the incapacitated or protected person's incapacity and the appointment of the
30 guardian or conservator.

31 (h) The denial by a court of this state of a petition to accept a guardianship or

1 conservatorship transferred from another state does not affect the ability of the
2 guardian or conservator to seek appointment as guardian or conservator in this state
3 under AS 13.26.116 or 13.26.165 if the court has jurisdiction to make an appointment
4 other than by reason of the provisional order of transfer.

5 **Article 4. Registration and Recognition of Orders from Other States.**

6 **Sec. 13.27.300. Registration of guardianship orders.** If a guardian has been
7 appointed in another state and a petition for the appointment of a guardian is not
8 pending in this state, the guardian appointed in the other state, after giving notice to
9 the appointing court of an intent to register, may register the guardianship order in this
10 state by filing as a foreign judgment in a court, in any appropriate judicial district of
11 this state, certified copies of the order and letters of office.

12 **Sec. 13.27.310. Registration of protective orders.** If a conservator has been
13 appointed in another state and a petition for a protective order is not pending in this
14 state, the conservator appointed in the other state, after giving notice to the appointing
15 court of an intent to register, may register the protective order in this state by filing as
16 a foreign judgment in a court of this state, in any judicial district in which property
17 belonging to the protected person is located, certified copies of the order and letters of
18 office and of any bond.

19 **Sec. 13.27.320. Effect of registration.** (a) On registration of a guardianship or
20 protective order from another state, the guardian or conservator may exercise in this
21 state all powers authorized in the order of appointment except as prohibited under the
22 laws of this state, including maintaining actions and proceedings in this state and, if
23 the guardian or conservator is not a resident of this state, subject to any conditions
24 imposed on nonresident parties.

25 (b) A court of this state may grant any relief available under this chapter and
26 other law of this state to enforce a registered order.

27 **Article 5. Miscellaneous Provisions.**

28 **Sec. 13.27.400. Uniformity of application and construction.** In applying and
29 construing this chapter, consideration shall be given to the need to promote uniformity
30 of the law with respect to its subject matter among states that enact it.

31 **Sec. 13.27.410. Relation to Electronic Signatures in Global and National**

1 protective order is sought or has been issued;

2 (12) "record" means information that is inscribed on a tangible
3 medium or that is stored in an electronic or other medium and is retrievable in
4 perceivable form;

5 (13) "respondent" means an adult for whom a protective order or the
6 appointment of a guardian is sought;

7 (14) "state" means a state of the United States, the District of
8 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular
9 possession subject to the jurisdiction of the United States.

10 **Sec. 13.27.495. Short title.** This chapter may be cited as the Uniform Adult
11 Guardianship and Protective Proceedings Jurisdiction Act.

12 * **Sec. 25.** AS 47.10.115(c) is amended to read:

13 (c) Notwithstanding (b)(1) - (3) of this section, the department may not
14 distribute the proceeds of a trust under this section if the payment would be made to a
15 guardian of a child who had been in the custody of the department immediately before
16 the establishment of the guardianship, unless the guardianship was established under
17 AS 13.26.090 - 13.26.150 [AS 13.26.090 - 13.26.155].

18 * **Sec. 26.** AS 08.26.040 and AS 13.26.155 are repealed.

19 * **Sec. 27.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 APPLICABILITY. (a) Except as provided in (b) of this section, AS 13.27, enacted by
22 sec. 24 of this Act, applies to guardianship and protective proceedings that begin on or after
23 the effective date of this Act.

24 (b) For guardianship and protective proceedings begun before the effective date of
25 this Act, regardless of whether a guardianship or protective order has been issued,
26 AS 13.27.010 - 13.27.040, 13.27.200, 13.27.210, 13.27.300 - 13.27.320, 13.27.400,
27 13.27.410, and 13.27.490, as enacted by sec. 24 of this Act, apply.

28 * **Sec. 28.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 TRANSITION. A person who is not an individual who, on the effective date of this
31 Act, has a current organizational license issued by the Department of Commerce, Community,

1 and Economic Development under AS 08.26.040 may continue to provide guardianship and
2 conservatorship services under the requirements of AS 08.26 until the license expires. Each
3 individual who, on the effective date of this Act, performs guardianship or conservatorship
4 services under a current organizational license must apply for and receive an individual
5 license issued under AS 08.26 within 60 days after the expiration of the organizational license
6 in order to continue to provide guardianship or conservatorship services.