

HOUSE CS FOR CS FOR SENATE BILL NO. 101(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/1/08

Referred: Rules

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 **(b) of this section**
7 **or** AS 08.26.180, a person may not engage in the business of providing services as a
8 **private professional** guardian or [A] conservator unless the person has a license
9 issued under this chapter.

10 * **Sec. 2.** AS 08.26.010 is amended by adding a new subsection to read:

11 (b) An individual may be appointed and provide services as a private
12 professional guardian or conservator without a license issued under this chapter and
13 receive compensation approved by a court as long as the individual does not act as a
14 guardian or conservator for more than one person or two people who are related to

1 each other up to and including the fourth degree of consanguinity, whether of the
2 whole or half blood or by adoption, computed under the rules of civil law.

3 * **Sec. 3.** AS 08.26.020 is amended to read:

4 **Sec. 08.26.020. Requirements for [INDIVIDUAL] private professional full**
5 **and partial guardian licenses [LICENSE].** The department shall issue **a** [AN
6 INDIVIDUAL] private professional **full** guardian license 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
14 DEPARTMENT THAT THE INDIVIDUAL IS ABLE TO BE BONDED AND
15 INSURED;

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

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

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

29 * **Sec. 4.** AS 08.26.020 is amended by adding a new subsection to read:

30 (b) The department shall issue a private professional partial guardian license
31 to an individual who satisfies the requirements under (a)(1) - (5) of this section. A

1 licensed private professional partial guardian may not perform conservator services.

2 * **Sec. 5.** AS 08.26.030 is amended to read:

3 **Sec. 08.26.030. Requirements for [INDIVIDUAL] private professional**
 4 **conservator license.** The department shall issue **a** [AN INDIVIDUAL] private
 5 professional conservator license to an individual

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

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

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

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

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

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

27 **(6)** [(7)] who satisfies the application requirements of AS 08.26.060.

28 * **Sec. 6.** AS 08.26.060 is amended to read:

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
 4 FINGERPRINTS MUST BE THE FINGERPRINTS OF THE APPLICANT IF THE
 5 APPLICANT IS AN INDIVIDUAL, OR, IF THE APPLICANT IS AN
 6 ORGANIZATION, FINGERPRINTS OF THE

7 (A) OFFICERS OF THE ORGANIZATION, IF THE
 8 APPLICANT IS A CORPORATION;

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

11 (C) PARTNERS OF THE ORGANIZATION, IF THE
 12 APPLICANT IS A PARTNERSHIP;]

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

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

19 (3) [(4)] a written statement signed by the applicant that the applicant
 20 will allow immediate access at any time to the department to the file of a ward or
 21 protected person and to financial information regarding the applicant, including
 22 corporate or other business records; and

23 (4) [(5) A DETAILED RESUME, INCLUDING RELEVANT
 24 EXPERIENCE, FOR EACH EMPLOYEE AND CONTRACTOR OF THE
 25 APPLICANT WHO MAY PROVIDE SERVICES TO A WARD OR PROTECTED
 26 PERSON;

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

30 (7) IF THE APPLICANT IS NOT AN INDIVIDUAL, A COPY OF
 31 THE DOCUMENTS UNDER WHICH THE APPLICANT WAS FORMED,

1 INCLUDING ARTICLES OF INCORPORATION AND BYLAWS IF THE
2 APPLICANT IS A CORPORATION].

3 * **Sec. 7.** AS 08.26.080 is amended to read:

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

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

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

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

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

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

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

23 * **Sec. 8.** AS 08.26.080 is amended by adding a new subsection to read:

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

26 * **Sec. 9.** AS 08.26.100 is amended to read:

27 **Sec. 08.26.100. Court appointment.** **An individual** [A PERSON] who
28 engages in the business of providing services as a guardian or conservator may not be
29 appointed **as** a guardian or a conservator in a court proceeding unless the **individual**
30 [PERSON] is licensed under this chapter or exempt under **AS 08.26.010 or**
31 AS 08.26.180.

1 * **Sec. 10.** AS 08.26.130 is amended to read:

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

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

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

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

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

14 (5) has advertised **the individual's** [ITS] services in a false or
15 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 **individual's**
18 [PERSON'S] ability to provide [THE LICENSEE'S] services competently and safely
19 for the ward or protected 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 **individual** [PERSON] was issued **a**
30 [AN INDIVIDUAL] private professional guardian license; or

31 (B) conservatorships, if the individual was issued **a** [AN

1 INDIVIDUAL] private professional conservator license; **or**

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

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

5 (A) DOES NOT MAINTAIN A PLACE OF BUSINESS IN
 6 THIS STATE;

7 (B) IS NOT IN COMPLIANCE WITH THE STATE AND
 8 FEDERAL REQUIREMENTS THAT APPLY TO THE ORGANIZATION;
 9 OR

10 (C) HAS AN EMPLOYEE WHO PROVIDES THE
 11 SERVICES OF A PRIVATE PROFESSIONAL GUARDIAN OR PRIVATE
 12 PROFESSIONAL CONSERVATOR FOR THE ORGANIZATION AND IS
 13 NOT LICENSED UNDER THIS CHAPTER].

14 * **Sec. 11.** AS 08.26.180 is amended to read:

15 **Sec. 08.26.180. Exemption.** **An individual who is employed by a** [A]
 16 financial institution regulated by the federal government or a financial institution
 17 regulated under AS 06 by the department is not required to be licensed under this
 18 chapter in order to engage, **in the course of the individual's employment by the**
 19 **financial institution,** in the business of providing services as a guardian or a
 20 conservator or be appointed as a private professional guardian or a private professional
 21 conservator by a court. In this **section** [SUBSECTION], "financial institution" does
 22 not include a person who is exempt under AS 06.26.020 or who has received an
 23 exemption under AS 06.26.200.

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

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

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

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

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

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

31 (5) ["ORGANIZATIONAL LICENSE" MEANS A LICENSE

1 ISSUED UNDER AS 08.26.040;

2 (6) "private professional conservator" means **an individual** [A
3 PERSON] who acts as a conservator under AS 13.26.165 - 13.26.320 and receives
4 compensation for acting in that capacity;

5 **(6)** [(7)] "private professional conservator license" means a license
6 issued under AS 08.26.030;

7 **(7)** [(8)] "private professional guardian" means **an individual** [A
8 PERSON] who acts as a guardian under **AS 13.26.030 - 13.26.150** [AS 13.26.030 -
9 13.26.155] and receives compensation for acting in that capacity;

10 **(8)** [(9)] "private professional guardian license" means a license issued
11 under AS 08.26.020;

12 **(9)** [(10)] "protected person" has the meaning given in AS 13.26.005;

13 **(10)** [(11)] "ward" has the meaning given in AS 13.26.005.

14 * **Sec. 13.** AS 13.26.010 is amended by adding a new subsection to read:

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

17 * **Sec. 14.** AS 13.26.095(d) is amended to read:

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

24 * **Sec. 15.** AS 13.26.109(b) is amended to read:

25 (b) Statements of a ward or respondent in the course of evaluations,
26 examinations, and treatment under **AS 13.26.090 - 13.26.150** [AS 13.26.090 -
27 13.26.155] are privileged, confidential, and not admissible without the ward's or
28 respondent's consent in any civil or criminal proceeding other than proceedings under
29 **AS 13.26.090 - 13.26.150** [AS 13.26.090 - 13.26.155]. A ward or respondent at all
30 times has the right to refuse to answer questions if the answers may tend to incriminate
31 the ward or respondent.

1 * **Sec. 16.** AS 13.26.109(c) is amended to read:

2 (c) During an interview or a testing conducted under **AS 13.26.090 -**
 3 **13.26.150** [AS 13.26.090 - 13.26.155], a ward or respondent has the right to be
 4 accompanied by an attorney or expert of the ward's or respondent's own choosing.

5 * **Sec. 17.** AS 13.26.109(d) is amended to read:

6 (d) The court, if requested by a ward or respondent in preparation for and in
 7 connection with a hearing held under **AS 13.26.090 - 13.26.150** [AS 13.26.090 -
 8 13.26.155], shall appoint an expert having expertise in regard to the alleged or
 9 admitted incapacity to examine the respondent and testify on the respondent's behalf.
 10 The request shall be filed in court at least five days before the hearing. An expert
 11 appointed under this subsection may be the same expert appointed under
 12 AS 13.26.106(c).

13 * **Sec. 18.** AS 13.26.113(b) is amended to read:

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

19 * **Sec. 19.** AS 13.26.135(b) is amended to read:

20 (b) Notice shall be served personally, **by certified mail, or by any other**
 21 **method authorized by court rule** on the ward's or respondent's spouse and parents if
 22 they can be found within the state. Except as provided in (a)(1) of this section, notice
 23 to the spouse and parents, if they cannot be found within the state, and to all other
 24 persons shall be given as provided in AS 13.06.110.

25 * **Sec. 20.** AS 13.26.145(f) is amended to read:

26 (f) When in the best interest of the incapacitated person, a court may
 27 decline to appoint a person who has priority under (d) of this section as
 28 guardian of an incapacitated person and may appoint as guardian a person who
 29 has a lower priority than another person or who does not have a priority. **If the**
 30 **court appoints a person with a lower priority under (d) of this section than**
 31 **another person, the court shall make appropriate written findings related**

1 **to why the best interests of the respondent require appointment of the**
 2 **person with a lower priority.**

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

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

9 [(1)] exclusive jurisdiction to determine

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

12 (2) [EXCLUSIVE JURISDICTION TO DETERMINE] how the estate
 13 of the protected person **that** [WHICH] is subject to the laws of this state shall be
 14 managed, expended, or distributed to or for the use of the protected person or any of
 15 the person's dependents [;

16 (3) CONCURRENT JURISDICTION TO DETERMINE THE
 17 VALIDITY OF CLAIMS AGAINST THE PERSON OR ESTATE OF THE
 18 PROTECTED PERSON AND THE PERSON'S TITLE TO ANY PROPERTY OR
 19 CLAIM].

20 * **Sec. 22.** AS 13.26.185(a) is amended to read:

21 (a) On a petition for appointment of a conservator or other protective order,
 22 the person to be protected and the person's spouse or, if none, the person's parents,
 23 must be served personally, **by certified mail, or by any other method authorized by**
 24 **court rule** with notice of the proceedings at least 14 days before the date of hearing if
 25 they can be found within the state, or, if they cannot be found within the state, they
 26 must be given notice in accordance with AS 13.06.110. Waiver by the person to be
 27 protected is not effective unless the person to be protected attends the hearing or,
 28 unless minority is the reason for the proceeding, waiver is confirmed in an interview
 29 with the visitor.

30 * **Sec. 23.** AS 13.26.210(a) is amended to read:

31 (a) The court may appoint a competent person, including a private

1 professional **conservator, private professional full** guardian **under AS 08.26.020**, or
 2 the public guardian, as the conservator of the estate of a protected person.

3 * **Sec. 24.** AS 13.26.210(f) is amended to read:

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

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

12 (a) **Subject to AS 13.26.285(e), a** [A] conservator shall pay from the estate all
 13 just claims against the estate and against the protected person arising before or after
 14 the conservatorship was established [BUT BEFORE THE PROTECTED PERSON
 15 DIES,] upon their presentation and allowance. A claim is considered presented on the
 16 first to occur of receipt of the written statement of claim by the conservator or the
 17 filing of the claim with the court. A presented claim is allowed if it is not disallowed
 18 by written statement mailed by the conservator to the claimant within 60 days after its
 19 presentation. The presentation of a claim tolls any statute of limitations relating to the
 20 claim until 30 days after its disallowance. A claim may be presented by either of the
 21 following methods:

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

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

28 * **Sec. 26.** AS 13.26.380 is amended by adding a new subsection to read:

29 (e) The records required to be kept and maintained under (c)(3) of this section
 30 are confidential and are not subject to inspection or copying under AS 40.25.110 -
 31 40.25.120 unless the records are relevant to an investigation or proceeding involving

1 the public guardian or a case in which the public guardian provided guardianship or
 2 conservatorship services.

3 * **Sec. 27.** AS 13.26.400 is amended to read:

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

16 * **Sec. 28.** AS 13.26.410(e) is amended to read:

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

23 * **Sec. 29.** AS 13 is amended by adding a new chapter to read:

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

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

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

29 **Sec. 13.27.020. Communication between courts.** (a) A court of this state may
 30 communicate with a court in another state concerning a proceeding arising under this
 31 chapter. The court may allow the parties to participate in the communication. Except

1 as otherwise provided in (b) of this section, the court shall make a record of the
2 communication.

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

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

8 (1) hold an evidentiary hearing;

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

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

12 (4) order any appropriate investigation of a person involved in a
13 proceeding;

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

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

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

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

28 **Sec. 13.27.040. Taking testimony in another state.** (a) In a guardianship or
29 protective proceeding, in addition to other procedures that may be available, testimony
30 of a witness who is located in another state may be offered by deposition or other
31 means allowable in this state for testimony taken in another state. The court on its own

1 motion may request that the testimony of a witness be taken in another state and may
2 prescribe the manner in which and the terms on which the testimony is to be taken.

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

8 **Article 2. Jurisdiction.**

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

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

14 (1) this state is the respondent's home state;

15 (2) on the date the petition is filed, this state is a significant-connection
16 state, and

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

20 (B) the respondent has a home state, a petition for an
21 appointment or order is not pending in a court of that state or another
22 significant-connection state, and, before the court makes an appointment or
23 issues an order,

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

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

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

30 (3) this state does not have jurisdiction under either (1) or (2) of this
31 section and the respondent's home state and all significant-connection states have

1 declined to exercise jurisdiction under AS 13.27.140 because

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

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

5 (4) the requirements for special jurisdiction under AS 13.27.120 are
6 met.

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

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

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

13 (3) appoint a guardian or conservator for an incapacitated or protected
14 person for whom a provisional order to transfer the proceeding from another state has
15 been issued under procedures similar to AS 13.27.200.

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

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

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

30 (b) If a court of this state declines to exercise its jurisdiction under (a) of this
31 section, it shall either dismiss or stay the proceeding. The court may impose any

1 condition the court considers just and proper, including the condition that a petition for
 2 the appointment of a guardian or issuance of a protective order be filed promptly in
 3 another state.

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

- 6 (1) any expressed preference of the respondent;
- 7 (2) whether abuse, neglect, or exploitation of the respondent has
 8 occurred or is likely to occur and which state could best protect the respondent from
 9 the abuse, neglect, or exploitation;
- 10 (3) the length of time the respondent was physically present in or was a
 11 legal resident of this or another state;
- 12 (4) the distance of the respondent from the court in each state;
- 13 (5) the financial circumstances of the respondent's estate;
- 14 (6) the nature and location of the evidence;
- 15 (7) the ability of the court in each state to decide the issue
 16 expeditiously and the procedures necessary to present evidence;
- 17 (8) the familiarity of the court of each state with the facts and issues in
 18 the proceeding; and
- 19 (9) if an appointment were made, the court's ability to monitor the
 20 conduct of the guardian or conservator.

21 **Sec. 13.27.150. Jurisdiction declined by reason of conduct.** (a) If at any time
 22 a court of this state determines that it acquired jurisdiction to appoint a guardian or
 23 issue a protective order because of unjustifiable conduct, the court may

- 24 (1) decline to exercise jurisdiction;
- 25 (2) exercise jurisdiction for the limited purpose of fashioning an
 26 appropriate remedy to ensure the health, safety, and welfare of the respondent or the
 27 protection of the respondent's property or prevent a repetition of the unjustifiable
 28 conduct; the exercise of limited jurisdiction under this paragraph may include staying
 29 the proceeding until a petition for the appointment of a guardian or issuance of a
 30 protective order is filed in a court of another state having jurisdiction; or
 31 (3) continue to exercise jurisdiction after considering

1 (A) the extent to which the respondent and all persons required
 2 to be notified of the proceedings have acquiesced in the exercise of the court's
 3 jurisdiction;

4 (B) whether it is a more appropriate forum than the court of any
 5 other state under the factors set out in AS 13.27.140(c); and

6 (C) whether the court of any other state would have jurisdiction
 7 under factual circumstances in substantial conformity with the jurisdictional
 8 standards of AS 13.27.110.

9 (b) If a court of this state determines that it acquired jurisdiction to appoint a
 10 guardian or issue a protective order because a party seeking to invoke its jurisdiction
 11 engaged in unjustifiable conduct, it may assess against that party necessary and
 12 reasonable expenses, including attorney fees, investigative fees, court costs,
 13 communication expenses, witness fees and expenses, and travel expenses. The court
 14 may not assess fees, costs, or expenses of any kind against this state or a governmental
 15 subdivision, agency, or instrumentality of this state unless authorized by law other
 16 than this chapter.

17 **Sec. 13.27.160. Notice of proceeding.** If a petition for the appointment of a
 18 guardian or issuance of a protective order is brought in this state and this state was not
 19 the respondent's home state on the date the petition was filed, in addition to complying
 20 with the notice requirements of this state, notice of the petition must be given to those
 21 persons who would be entitled to notice of the petition if a proceeding were brought in
 22 the respondent's home state. The notice must be given in the same manner as notice is
 23 required to be given in this state.

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

30 (1) if the court in this state has jurisdiction under AS 13.27.110, it may
 31 proceed with the case unless a court in another state acquires jurisdiction under

1 provisions similar to AS 13.27.110 before the appointment or issuance of the order;

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

8 **Sec. 13.27.180. Definitions for AS 13.27.100 - 13.27.180.** In AS 13.27.100 -
9 13.27.180,

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

14 (2) "home state" means the state in which the respondent was
15 physically present, including any period of temporary absence, for at least six
16 consecutive months immediately before the filing of a petition for a protective order or
17 the appointment of a guardian; or, if none, the state in which the respondent was
18 physically present, including any period of temporary absence, for at least six
19 consecutive months ending with the six months before the filing of the petition;

20 (3) "significant-connection state" means a state, other than the home
21 state, with which a respondent has a significant connection other than mere physical
22 presence and in which substantial evidence concerning the respondent is available; in
23 determining whether a respondent has a significant connection with a particular state,
24 the court shall consider

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

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

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

30 (D) the extent to which the respondent has other ties to the state
31 such as voting registration, filing of state or local tax returns, vehicle

1 registration, driver's license, social relationships, and receipt of services.

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

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

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

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

12 (d) The court shall issue an order provisionally granting a petition to transfer a
13 guardianship and shall direct the guardian to petition for guardianship in the other state
14 if the court is satisfied that the guardianship will be accepted by the court in the other
15 state and the court finds that

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

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 incapacitated person; and

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

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

27 (1) the protected person is physically present in or is reasonably
28 expected to move permanently to the other state, or the protected person has a
29 significant connection to the other state considering the factors set out in
30 AS 13.27.180(3);

31 (2) an objection to the transfer has not been made or, if an objection

1 has been made, the objector has not established that the transfer would be contrary to
2 the interests of the protected person; and

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

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

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

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

12 **Sec. 13.27.210. Accepting guardianship or conservatorship transferred**
13 **from another state.** (a) To confirm transfer of a guardianship or conservatorship
14 transferred to this state under provisions similar to those in AS 13.27.200, the guardian
15 or conservator must petition the court in this state to accept the guardianship or
16 conservatorship. The petition must include a certified copy of the other state's
17 provisional order of transfer.

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

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

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

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

31 (2) the guardian or conservator is ineligible for an appointment in this

1 state.

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

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

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

13 (h) The denial by a court of this state of a petition to accept a guardianship or
14 conservatorship transferred from another state does not affect the ability of the
15 guardian or conservator to seek appointment as guardian or conservator in this state
16 under AS 13.26.116 or 13.26.165 if the court has jurisdiction to make an appointment
17 other than by reason of the provisional order of transfer.

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

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

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

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

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

9 **Article 5. Miscellaneous Provisions.**

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

13 **Sec. 13.27.410. Relation to Electronic Signatures in Global and National**
 14 **Commerce Act.** This chapter modifies, limits, and supersedes 15 U.S.C. 7001, et seq.
 15 (Electronic Signatures in Global and National Commerce Act), but does not modify,
 16 limit, or supersede 15 U.S.C. 7001(c), or authorize electronic delivery of any of the
 17 notices described in 15 U.S.C. 7003(6).

18 **Sec. 13.27.420. Relation to AS 13.26.** Nothing in this chapter limits the rights
 19 of an incapacitated person available in a guardianship or conservatorship proceeding
 20 in this state under AS 13.26.

21 **Article 6. General Provisions.**

22 **Sec. 13.27.490. Definitions.** In this chapter,

23 (1) "adult" means an individual who has reached 18 years of age;

24 (2) "conservator" means a person appointed by the court to administer
 25 the property of an adult, including a person appointed under AS 13.26.165;

26 (3) "guardian" means a person appointed by the court to make
 27 decisions regarding the person of an adult, including a person appointed under
 28 AS 13.26.116; however, if the person was appointed as a full guardian under
 29 AS 13.26, the person has the powers and duties set out under AS 13.26.150;

30 (4) "guardianship order" means an order appointing a guardian;

31 (5) "guardianship proceeding" means a judicial proceeding in which an

1 order for the appointment of a guardian is sought or has been issued;

2 (6) "incapacitated person" means an adult for whom a guardian has
3 been appointed;

4 (7) "party" means the respondent, petitioner, guardian, conservator, or
5 any other interested person allowed by the court to participate in a guardianship or
6 protective proceeding;

7 (8) "person" means, except in the terms incapacitated person or
8 protected person, an individual, corporation, business trust, estate, trust, partnership,
9 limited liability company, association, joint venture, public corporation, government
10 or governmental subdivision, agency, or instrumentality, or any other legal or
11 commercial entity;

12 (9) "protected person" means an adult for whom a protective order has
13 been issued;

14 (10) "protective order" means an order appointing a conservator or
15 other court order related to management of an adult's property;

16 (11) "protective proceeding" means a judicial proceeding in which a
17 protective order is sought or has been issued;

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

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

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

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

28 * **Sec. 30.** AS 47.10.115(c) is amended to read:

29 (c) Notwithstanding (b)(1) - (3) of this section, the department may not
30 distribute the proceeds of a trust under this section if the payment would be made to a
31 guardian of a child who had been in the custody of the department immediately before

1 the establishment of the guardianship, unless the guardianship was established under
2 AS 13.26.090 - 13.26.150 [AS 13.26.090 - 13.26.155].

3 * **Sec. 31.** AS 08.26.040 and AS 13.26.155 are repealed.

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

6 APPLICABILITY. (a) Except as provided in (b) of this section, AS 13.27, enacted by
7 sec. 29 of this Act, applies to guardianship and protective proceedings that begin on or after
8 the effective date of this Act.

9 (b) For guardianship and protective proceedings begun before the effective date of
10 this Act, regardless of whether a guardianship or protective order has been issued,
11 AS 13.27.010 - 13.27.040, 13.27.200, 13.27.210, 13.27.300 - 13.27.320, 13.27.400,
12 13.27.410, and 13.27.490, as enacted by sec. 29 of this Act, apply.

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

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