

Introduced: 1/23/76  
Referred: Health, Education &  
Social Services and Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 645

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to guardians of incapacitated  
7 persons."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 13.26.110 is repealed and re-enacted to read:

10 Sec. 13.26.110. FINDINGS; ORDER OF APPOINTMENT. (a) The court,  
11 at a hearing for the appointment of a guardian for an incapacitated  
12 person, shall:

13 (1) inquire into the nature and extent of the general  
14 functioning of the person asserted to need a guardian;

15 (2) determine the extent of the impairment of the person's  
16 behavior;

17 (3) ascertain his capacity to care for himself.

18 (b) If it is found that the person for whom a guardian is sought  
19 possesses the capacity to care for himself, the court may dismiss the  
20 action or enter any other appropriate order.

21 (c) If it is found that the person for whom a guardian is sought  
22 is able to perform some but not all of the functions necessary to care  
23 for himself, the court may appoint a partial guardian to provide  
24 limited guardianship services, but may not appoint a plenary guardian.

25 (d) If it is found that the person for whom a guardian is sought  
26 is totally without capacity to care for himself, the court may appoint  
27 a plenary guardian.

28 (e) The duration of the term of guardianship under this section  
29 shall be specified in the court order.

1 \* Sec. 2. AS 13.26 is amended by adding a new section to read:

2 Sec. 13.26.112. PARTIAL GUARDIANSHIP. A court order establishing  
3 partial guardianship shall contain findings of fact, shall define the  
4 powers and duties of the partial guardian so as to permit the incapacitated  
5 person to care for himself to the extent he is able, and shall  
6 specify legal disabilities to which the incapacitated person is subject.

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

7 Sec. 13.26.114. LIVING ARRANGEMENTS. (a) In addition to  
8 evaluating capacity, the court with the help of a physician it has  
9 appointed and a visitor (as defined in sec. 130 of this chapter) shall  
10 examine proposed and alternative living arrangements for the person  
11 asserted to need a guardian.  
12

13 (b) A guardian who, other than in response to a court order,  
14 places his ward in an institution providing care for mentally ill  
15 individuals shall inform the court of the placement.

16 \* Sec. 4. AS 13.26.120 is amended to read:

17 Sec. 13.26.120. TERMINATION OF GUARDIANSHIP FOR INCAPACITATED  
18 PERSON. The authority and responsibility of a guardian for an incapacitated  
19 person terminates upon the death of the guardian or ward, the  
20 determination of incapacity of the guardian, or removal or resignation  
21 as provided in sec. 125 of this chapter, or upon the expiration of the  
22 court order specifying the duration of the guardianship. Testamentary  
23 appointment under an informally probated will terminates if the will  
24 is later denied probate in a formal proceeding. Termination does not  
25 affect his liability for prior acts nor his obligation to account for  
26 funds and assets of his ward.

27 \* Sec. 5. AS 13.26.125 is amended to read:

28 Sec. 13.26.125. REMOVAL OR RESIGNATION OF GUARDIAN; CHANGE IN OR  
29 TERMINATION OF INCAPACITY. (a) On petition of the ward or any person

1 interested in his welfare, the court may modify the provisions of the  
2 court order to change the responsibilities of the guardian or remove a  
3 guardian and appoint a successor if in the best interests of the ward.  
4 On petition of the guardian, the court may accept his resignation and  
5 make any other order which may be appropriate.

6 (b) An order adjudicating incapacity may specify a minimum  
7 period, not exceeding one year, during which no petition for an adju-  
8 dication that the ward is no longer incapacitated or no longer incapa-  
9 citated to the same degree may be filed without special leave. Subject  
10 to this restriction, the ward or any person interested in his welfare  
11 may petition for an order that he is no longer incapacitated or no  
12 longer incapacitated to the same degree, [AND] for removal or resigna-  
13 tion of the guardian, or for a change in the guardian's responsibilities.

14 A request for this order may be made by informal letter to the court  
15 or judge and any person who knowingly interferes with transmission of  
16 this kind of request to the court or judge may be adjudged guilty of  
17 contempt of court.

18 (c) Before removing a guardian, changing his responsibilities,  
19 accepting the resignation of a guardian, or ordering that the ward's  
20 incapacity has changed or terminated, the court, following the same  
21 procedures to safeguard the rights of the ward as apply to a petition  
22 for appointment of a guardian, may send a visitor to the residence of  
23 the present guardian and to the place where the ward resides or is  
24 detained, to observe conditions and report in writing to the court.

25 \* Sec. 6. AS 13.26.135(a) is amended to read:

26 (a) In a proceeding for the appointment, change in responsibili-  
27 ties, or removal of a guardian of an incapacitated person other than  
28 the appointment of a temporary guardian or temporary suspension of a  
29 guardian, notice of hearing shall be given to each of the following:

1 (1) the ward or the person alleged to be incapacitated and  
2 his spouse, parents and adult children;

3 (2) any person [WHO IS] serving as his guardian or [,]  
4 conservator or having [WHO HAS] his care and custody; and

5 (3) in case no other person is notified under (1) of this  
6 subsection, at least one of his closest adult relatives, if any can be  
7 found.

8 \* Sec. 7. AS 13.26.145 is amended to read:

9 Sec. 13.26.145. WHO MAY BE GUARDIAN; PRIORITIES. (a) Any  
10 competent person or a suitable agency or institution, public or  
11 private, including any private association capable of conducting an  
12 active guardianship program for an incapacitated person, may be  
13 appointed guardian of an incapacitated person, but the court may not,  
14 in the absence of special circumstances, appoint as guardian a public  
15 or private agency that is providing direct care to the incapacitated  
16 person.

17 (b) Persons who are not disqualified have priority for appoint-  
18 ment as guardian in the following order:

19 (1) the spouse of the incapacitated person;

20 (2) an adult child of the incapacitated person;

21 (3) a parent of the incapacitated person, including a  
22 person nominated by will or other writing signed by the deceased  
23 parent;

24 (4) any relative of the incapacitated person with whom he  
25 has resided for more than six months before the filing of the petition;

26 (5) a person nominated by the person who is caring for him  
27 or paying benefits to him;

28 (6) a public or private agency, institution, or association  
29 capable of conducting an active guardianship program for an incapaci-

1        tated person.

2        \* Sec. 8. AS 13.26.150(a)(5) is amended to read:

3                (5) a guardian is required to report the condition of his  
4        ward and of the estate which has been subject to his possession or  
5        control, as required by the court or court rule; the report shall as  
6        a minimum contain statements indicating:

7                        (A) the person's current mental, physical, and social  
8        condition;

9                        (B) his present living arrangements;

10                       (C) the need for continued guardianship services;

11                       (D) any other information requested by the court or  
12        necessary or desirable in the opinion of the guardian;

13        \* Sec. 90. AS 13.26 is amended by adding a new section to read:

14                Sec. 13.26.152. NOTICE TO WARD. A reasonable effort shall be  
15        made by the court at the time a guardian is appointed to acquaint the  
16        incapacitated person with his right to request, at a later date, his  
17        guardian's dismissal or a modification of the guardianship order, and  
18        a written statement shall be provided to him explaining his rights and  
19        specifying the procedures to be followed in petitioning the court.  
20