

Introduced: 1/16/81
Referred: State Affairs and
Judiciary

1 IN THE SENATE

BY BRADLEY

2 SENATE BILL NO. 92

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to veterans' guardianship."

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

8 * Section 1. AS 26 is amended by adding a new chapter to read:

9 CHAPTER 17. UNIFORM VETERANS' GUARDIANSHIP ACT.

10 Sec. 26.17.010. APPLICATION OF CHAPTER. Whenever, under a law of
11 the United States or a regulation of the Veterans' Administration, the
12 administrator requires, before payment of benefits, that a guardian be
13 appointed for a ward, the appointment shall be made as provided in this
14 chapter.

15 Sec. 26.17.020. NUMBER OF WARDS. (a) It is unlawful for a
16 person to accept appointment as guardian of a ward if the person is at
17 that time acting as guardian for five wards. Upon presentation of a
18 petition by an attorney of the Veterans' Administration alleging that a
19 guardian is acting in a fiduciary capacity for more than five wards and
20 requesting his discharge for that reason, the court, upon proof sub-
21 stantiating the petition, shall require a final accounting from the
22 guardian and shall discharge the guardian in the case.

23 (b) The limitation of this section does not apply if the guardian
24 is a bank or trust company acting for the wards' estates only.

25 (c) A person may be guardian of more than five wards if the wards
26 are all members of the same family.

27 (d) The limitation of this section does not apply to the Alaska
28 division of veterans' affairs or to a public guardian.

29 Sec. 26.17.030. APPOINTMENT OF GUARDIAN. (a) A petition for the

1 appointment of a guardian may be filed in a court by or on behalf of
2 a person who under law is entitled to priority of appointment. If no
3 person is entitled to priority of appointment or if the person so
4 entitled neglects or refuses to file a petition within 30 days after
5 mailing of notice by the Veterans' Administration to the last known
6 address of the person indicating the necessity for the appointment, a
7 petition for appointment may be filed in the court by or on behalf of
8 any responsible person residing in this state.

9 (b) The petition for appointment shall set out the name, age,
10 place of residence of the ward, the names and places of residence of
11 the nearest relatives, if known, and the fact that the ward is entitled
12 to receive money payable by or through the Veterans' Administration.
13 The petition shall set out the amount of money due and the amount of
14 probable future payments.

15 (c) The petition shall also set out the name and address of the
16 person or institution, if any, having actual custody of the ward.

17 (d) If the ward is mentally incompetent, the petition shall show
18 that the ward has been rated incompetent on examination by the Veterans'
19 Administration in accordance with the laws and regulations governing
20 the Veterans' Administration.

21 Sec. 26.17.040. EVIDENCE OF NECESSITY FOR GUARDIAN OF MINOR. If
22 a petition is filed for the appointment of a guardian of a minor ward,
23 a certificate of the administrator or his representative, setting out
24 the age of the minor as shown by the records of the Veterans' Adminis-
25 tration and the fact that the appointment of a guardian is a condition
26 precedent to the payment of any money due the minor by the Veterans'
27 Administration is prima facie evidence of the necessity for the appoint-
28 ment.

29 Sec. 26.17.050. EVIDENCE OF NECESSITY FOR GUARDIAN OF INCOMPETENT.

1 If a petition is filed for the appointment of a guardian of a mentally
2 incompetent ward, a certificate of the administrator or his representa-
3 tive, setting out the fact that the person has been rated incompetent
4 by the Veterans' Administration on examination in accordance with the
5 laws and regulations governing the Veterans' Administration and that
6 the appointment of a guardian is a condition precedent to the payment
7 of any money due the person by the Veterans' Administration, is prima
8 facie evidence of the necessity for the appointment.

9 Sec. 26.17.060. NOTICE. Upon filing a petition for the appoint-
10 ment of a guardian under this chapter, the court shall cause notice to
11 be given as provided in AS 13.26.185.

12 Sec. 26.17.070. FITNESS OF GUARDIAN; BOND. (a) Before making an
13 appointment under this chapter, the court shall establish to its satis-
14 faction that the person whose appointment as guardian is sought is a
15 fit and proper person to be appointed.

16 (b) Upon appointment the guardian shall, except as otherwise
17 provided in this section, execute and file a bond to be approved by the
18 court in an amount not less than the value of the personal property of
19 the estate plus the anticipated annual income. Thereafter the amount
20 of the bond shall be equal to the total value of the personal estate
21 plus the annual income. The bond shall be in the form and be condi-
22 tioned as required under AS 13.26.220. The premiums on the bonds shall
23 be paid from the estate.

24 (c) If a bank or trust company doing business in this state is
25 appointed guardian of the estate of a ward, a bond is not required of
26 that guardian unless the court by specific order requires a bond. If
27 the Alaska division of veterans' affairs is appointed guardian, a bond
28 is not required.

29 (d) If the court orders that the estate and income, or a part of

1 the estate or income, be deposited in a bank or trust company doing
2 business in this state and that the estate and income, or a part of the
3 estate or income, may not be withdrawn without authorization of the
4 court, the amount of the guardian's bond shall be reduced in an amount
5 equal to the amount of the estate and income on deposit with the bank
6 or trust company and the surety on the bonds shall be exonerated from
7 any loss to the estate in connection with the deposit.

8 (e) If a bond is tendered by a guardian with personal sureties,
9 the sureties shall file with the court a certificate under oath which
10 describes the property owned, both real and personal, and contains a
11 statement that they are each worth the sum named in the bond as the
12 penalty of the bond over and above all their debts and liabilities and
13 exclusive of property exempt from execution.

14 Sec. 26.17.080. ACCOUNTS: NOTICES AND HEARINGS. (a) A guardian
15 who receives because of his ward any money from the Veterans' Adminis-
16 tration shall file with the court annually, on the anniversary date of
17 the appointment, in addition to other accounts required by the court an
18 accurate account under oath of all money received by him, of all dis-
19 bursements, and showing the balance in his hands at the date of the
20 account and how the balance is invested.

21 (b) A certified copy of each account filed with the court shall
22 be sent by the guardian to the office of the Veterans' Administration
23 having jurisdiction over the area in which the court is located. The
24 court shall fix a time and place for the hearing on the account not
25 less than 15 days or more than 30 days from the date of filing the
26 account and notice of the hearing shall be given by the court to the
27 guardian and Veterans' Administration office concerned not less than 15
28 days before the date fixed for the hearing.

29 Sec. 26.17.090. PENALTY FOR FAILURE TO ACCOUNT. A guardian may

1 be removed if he fails to file an account of the money received by him
2 from the Veterans' Administration because of his ward within 30 days
3 after an account is required by either the court or the Veterans'
4 Administration, or fails to furnish the Veterans' Administration a copy
5 of his accounts as required by this chapter.

6 Sec. 26.17.100. COMPENSATION OF GUARDIAN. Compensation payable
7 to a guardian may not exceed five percent of the income of the ward
8 during any year. In the event of extraordinary services rendered by a
9 guardian the court may, upon petition and after hearing, authorize
10 additional compensation payable from the estate of the ward. Notice of
11 petition and hearing shall be given the proper office of the Veterans'
12 Administration in the manner provided in AS 13.06.110. Compensation is
13 not allowed on the corpus of an estate received from a preceding guar-
14 dian. Reasonable premiums paid by the guardian to any corporate surety
15 upon his bond may be allowed from the estate of the ward.

16 Sec. 26.17.110. INVESTMENTS. A guardian shall invest the money
17 of the estate in investments in which he has no interest.

18 Sec. 26.17.120. MAINTENANCE AND SUPPORT. A guardian may not
19 apply a portion of the estate of his ward for the support and main-
20 tenance of a person other than his ward, except upon order of the court
21 after a hearing, notice of which has been given the proper office of
22 the Veterans' Administration in the manner provided in AS 13.06.110.

23 Sec. 26.17.130. COPIES OF PUBLIC RECORDS. When a copy of a
24 public record is required by the Veterans' Administration to be used in
25 determining the eligibility of a person to participate in benefits made
26 available by the Veterans' Administration, the official charged with
27 the custody of the public record shall without charge provide the
28 applicant for benefits, a person acting on his behalf, or the repre-
29 sentative of the Veterans' Administration with a certified copy of the

1 record.

2 Sec. 26.17.140. COMMITMENT. (a) In a proceeding under the laws
3 of this state for involuntary court-ordered admission of a person
4 alleged to be mentally ill or otherwise in need of confinement in a
5 hospital or other institution for his care, the court may order the
6 admission of the person to the Veterans' Administration or other agency
7 of the United States Government, when:

8 (1) it is determined that involuntary court-ordered admission
9 to a hospital for mental disease or other institution is necessary for
10 safekeeping or treatment; and

11 (2) it appears that the person is eligible for care or
12 treatment by the Veterans' Administration or other agency and that
13 facilities are available for that person.

14 (b) The person whose involuntary court-ordered admission is
15 sought shall be personally served with notice of the pending proceeding
16 in the manner provided by AS 13.06.110 and 13.06.120. Nothing in this
17 chapter affects the person's right to appear and be heard in the pro-
18 ceedings.

19 (c) The committing court shall retain jurisdiction

20 (1) to inquire, at any time, into the mental condition of a
21 person committed; and

22 (2) to determine the necessity for continuance of his re-
23 straint.

24 Sec. 26.17.150. REGULATIONS OF VETERANS' ADMINISTRATION. (a)
25 Upon commitment under AS 26.17.140, a person is subject to the rules
26 and regulations of the Veterans' Administration or other agency when
27 admitted to any facility operated by the Veterans' Administration
28 inside or outside of this state.

29 (b) The chief officer of a facility of the Veterans' Administra-

1 tion or institution operated by another agency of the United States to
2 which a person is committed shall, with respect to the person, be
3 vested with the same powers as the institute director and the commis-
4 sioner of health and social services with respect to retention of
5 custody, transfer, parole, or discharge.

6 Sec. 26.17.160. TRANSFER OF PERSONS FROM DEPARTMENT OF HEALTH AND
7 SOCIAL SERVICES. (a) Upon receipt of a certificate of the Veterans'
8 Administration or other agency of the United States that facilities are
9 available for the care or treatment of a person committed to the De-
10 partment of Health and Social Services and that the person is eligible
11 for care or treatment, the commissioner of health and social services
12 may transfer the person to the Veterans' Administration or other agency
13 of the United States for care or treatment.

14 (b) The committing court shall be notified by the commissioner of
15 health and social services of a transfer under (a) of this section.

16 (c) A person may not be transferred to the Veterans' Administra-
17 tion or other agency of the United States if he is confined for con-
18 viction of a felony or misdemeanor or if he has been acquitted of the
19 charge solely on the ground of insanity, unless before transfer the
20 court originally committing the person enters an order for the transfer
21 after appropriate motion and hearing.

22 (d) A person transferred under this section is considered to be
23 committed to the Veterans' Administration or other agency of the United
24 States in accordance with the original commitment.

25 Sec. 26.17.170. DISCHARGE OF GUARDIAN. When a minor ward for
26 whom a guardian has been appointed under this chapter or other laws of
27 this state has reached the age of majority, and when an incompetent
28 ward is declared competent by the Veterans' Administration and the
29 court, the guardian shall, upon making a satisfactory accounting, be

1 discharged upon a petition filed for that purpose.

2 Sec. 26.17.180. APPLICATION; LIBERAL CONSTRUCTION. This chapter
3 shall be construed liberally and applies only to beneficiaries of the
4 Veterans' Administration.

5 Sec. 26.17.190. DEFINITIONS. In this chapter:

6 (1) "administrator" means the administrator of the veterans'
7 affairs of the United States or his successor;

8 (2) "benefits" means all money payable by the United States
9 through the Veterans' Administration;

10 (3) "estate" and "income" includes only money received by
11 the guardian from the Veterans' Administration and the earnings, inter-
12 est and profits derived from that money;

13 (4) "guardian" means a person acting as a fiduciary for a
14 ward;

15 (5) "Veterans' Administration" means the United States
16 Veterans' Administration, its predecessors or successors;

17 (6) "ward" means a beneficiary of the Veterans' Administra-
18 tion.

19 Sec. 26.17.200. SHORT TITLE. This chapter may be cited as the
20 Uniform Veterans' Guardianship Act.
21
22
23
24
25
26
27
28
29