

SB

101



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
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MEMORANDUM

Date: April 1, 2008

To: Representative John Coghill
Chair House Rules Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Referral File for SB101

Please accept this memo as the referral file for SB101. Attached are the following documents:

- Sponsor Statement
- HCSCSSB101(JUD) 25-LS0559\W
- Amendment #1
- HCSCSSB101(JUD) 25-LS0559\T
- Sectional Summary
- Changes
- Fiscal Notes
 - CED
 - ADM
 - HSS
- CSSB101(2d L&C) 25-LS0559\V
- Support
- HJUD Report

25th
ALASKA STATE LEGISLATURE

Senator Johnny Ellis, Chair
Senator Gary Stevens, Vice Chair
Senator Bettye Davis
Senator Lyman Hoffman
Senator Con Bunde



State Capitol, Room 9
465-3704

Senate Labor & Commerce Committee

Senate Bill 101, An Act relating to private professional conservators and private and public guardians

Sponsor Statement CSSB 101 (2nd L&C)

The Senate Labor & Commerce Committee introduced Senate Bill 101, An Act relating to private professional conservators and private and public guardians, at the request of the Office of Public Advocacy. The bill seeks to encourage more private professional guardians in Alaska, while assuring that individuals providing that service are appropriately licensed and regulated. Additionally, it mandates that public guardians meet or exceed the same standards as private professional guardians.

Senate Bill 101, now CSSB 101 (2nd L&C) would amend licensing statutes to require that all private professional guardians and conservators be licensed individually; the bill would repeal organizational licenses. Also, the bill would clarify that bonding and insurance requirements for guardians and conservators are those imposed by courts. The bill specifies certain crimes that would disqualify an individual from obtaining a license and imposes a further test of any other crime that would indicate that the individual is unsuitable to competently and safely provide services to the protected person. The bill also mandates written findings where courts deviate from the priority lists of potential guardians or conservators.

Additionally, the bill now incorporates into Alaska Statutes the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. This legislation, developed by the National Conference of Commissioners for Uniform State Laws, would establish common procedures among states for settling jurisdictional, transfer and enforcement issues arising from guardianship cases that cross state borders.

The Labor & Commerce Committee views this bill as a positive enhancement to Alaska's guardianship and conservator statutes and invites your support.

ADOPTED

25G-2
(3/28/2008)
(4:13 pm)

AMENDMENT #1

OFFERED IN THE HOUSE JUDICIARY
COMMITTEE

BY Rep. Gruenberg

TO: HCS CSSB 101(JUD)(25-LS0559\T)

1 Page 22, line 17:

2 Insert:

3 "Sec. 13.27.420. Relation to AS 13.26. Nothing in this chapter limits the rights
4 of an incapacitated person available in a guardianship or conservatorship proceeding in
5 this state under AS 13.26."

25-LS0559AT
Bullard
3/24/08

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:

Referred:

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 account ing 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. 13.27.210. 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 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 **Article 6. General Provisions.**

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

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

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

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

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

28 (5) "guardianship proceeding" means a judicial proceeding in which an
29 order for the appointment of a guardian is sought or has been issued;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sectional HCSCSSB101(JUD)
(25-LS0559\T)

Section 1. Requires a person providing services as a private professional guardian or conservator to have a license under AS 08.26.

Section 2 describes when an individual may be appointed and act as a private professional guardian or conservator without a license.

Section 3. Allows the issuance of a "full" or "partial guardian licenses, eliminates the requirement that an applicant for licensure provide proof that the individual is able to be bonded and insured, changes how the criminal history of an applicant will be interpreted by the department, and requires an applicant for either full or partial private profession guardian license to satisfy the requirements for obtaining a private professional conservator license under AS 08.26.03C.

Section 4. Adds a new subsection to AS 08.26.020, governing the issuance of a private professional partial guardian license.

Section 5. Eliminates the requirement an applicant for licensure provide proof that the individual is able to be bonded and insured, and changes how the criminal history of an applicant for licensure as a private professional conservator will be interpreted by the department.

Section 6. Changes what is required to be submitted with an application for licensure as a private professional conservator or guardian.

Section 7. Changes what an annual report from a licensee under AS 08.26 must include, and to whom the annual report should be submitted.

Section 8. Requires the office of public advocacy to notify the Department of Commerce, Community, and Economic Development of a licensee's compliance in filing an annual report.

Section 9. Conforms the language of AS 08.26.100 to changes made in sec. 1 of the Act.

Section 10. Amends the grounds for disciplinary action under AS 08.26, and the disciplinary actions the department may take against a licensee.

Section 11. Changes the language of AS 08.26.180 to provide individuals employed by certain financial institutions a licensing exemption to AS 08.26.

Section 12. Redefines some of the terms used in AS 08.26.

Section 13. Adds a subsection AS 13.26.010, which provides that the section is subject to the requirements of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Section 14-17. Amend the language of AS 13.26.095(d), AS 13.26.109(b), AS 13.26.109(c), and AS 13.26.109(d) to conform with the repeal of AS 13.26.155 made by sec. 26 of the Act.

Section 18. Changes the procedures by which a court may make a finding of incapacity.

Section 19. Allows notice of guardianship proceedings to be served by certified mail, or by any other method authorized by court rule.

Section 20. Requires a court to make appropriate written findings if the court appoints a person who has lower priority as a guardian of an incapacitated person under AS 13.26.145(d).

Section 21. Amends AS 13.26.170 to conform to the changes made by sec. 24 of the Act, and change the jurisdiction exercised by a court in which a petition has been filed seeking the appointment of a conservator or other protective order.

Section 22. Allows a petition for appointment of a conservator or other protective order to be served by certified mail, or by any other method authorized by court rule.

Section 23. Allows the court to appoint a conservator or a guardian.

Section 24. Requires a court to make appropriate written findings if the court appoints a person who has lower priority as a conservator of an incapacitated person under AS 13.26.210(d).

Section 25. states that the conservator shall pay all just claims against the estate and the protected person even after the person dies.

Section 26. Makes certain records required to be kept by a public guardian confidential unless the records are relevant to certain cases, investigations, or proceedings.

Section 27. Adds new eligibility requirements for individuals to whom a public guardian may delegate powers and duties.

Section 28. Allows the office of public advocacy, following termination of a public guardian's appointment, to collect the reasonable cost of the services rendered to the ward or protected person before releasing that ward or protected person's funds.

Section 29. Adds a new chapter, AS 13.27, "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act."

- Article 1. Application; Cooperation between Courts.

AS 13.27.010. Provides for how an Alaska court should treat a court of a foreign country in a manner concerning a guardianship or protective proceeding in Alaska.

AS 13.27.020. Establishes how an Alaska court may communicate with courts in other states concerning a guardianship or protective proceeding in Alaska.

AS 13.27.030. Establishes how an Alaska court may cooperate with courts in other states concerning a guardianship or protective proceeding in Alaska.

As 13.27.040. Provides for the taking of testimony in another state in a guardianship or protective proceeding in an Alaska court.

- Article 2. Jurisdiction

AS 13.27.100. Specifies that AS 13.27.100 – 13.27.180 provide the exclusive basis for subject matter jurisdiction for an Alaska court to appoint a guardian or issue a protective order for an adult.

AS 13.27.110. Establishes the jurisdiction basis upon which an Alaska court may appoint a guardian or issue a protective order.

AS 13.27.120. Describes when a court that lacks jurisdiction under AS 13.27.110 may exercise special jurisdiction.

AS 13.27.130. Establishes that a court that has appointed a guardian or issued a protective order has exclusive and continuing jurisdiction.

AS 13.27.140. Provides criteria for a court having jurisdiction under AS 13.27.110 to decide whether another court is a more appropriate forum, and the procedures a court must follow if it declines to exercise jurisdiction.

AS 13.27.150. Sets out the procedures that a court may employ if the court that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustified conduct.

AS 13.27.160. Requires notice of a petition for the appointment of a guardian or the issuance of a protective order be given to certain persons in another state if this state was not the respondent's home state when the petition was filed.

AS 13.27.170. Provides rules for an Alaska court when a court of another state is also engaged in a related proceeding concerning the appointment of a guardian or issuance of a protective order.

AS 13.27.180. Provides definitions for AS 13.27.100 – 13.27.180.

- Article 3. Transfer of Guardianship or Conservatorship.

AS 13.27.200 Establishes how a guardianship or conservatorship may be transferred to another state.

As 13.27.210. Establishes how a guardianship or conservatorship may be transferred from another state.

- Article 4. Registration and Recognition of Orders from Other States.

AS 13.27.300. Provides how a guardian appointed in another state may register a guardianship order in Alaska.

AS 13.27.310. Provides how a conservator appointed in another state may register a protective order in Alaska.

AS 13.27.320. Provides that a guardianship or protective order from another state that is registered in Alaska allows that guardian or conservator to exercise all powers authorized in the order except as may be prohibited by Alaska law.

- Article 5. Miscellaneous Provisions.
AS 13.27.400. Provides direction as to how AS 13.27 should be applied and construed to promote uniformity.
AS 13.27.410. Describes the relationship between AS 13.27 and the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001, et seq.).
- Article 6. General Provisions.
AS 13.27.490. Provides definitions for AS 13.27
As 13.27.495. Establishes a short title for the chapter.

Section 30. Changes the language of AS 47.10.115(c) to conform with the repeal of AS 13.26.155 made by sec. 26 of the Act.

Section 31. Repeals AS 08.26.040 and AS 13.26.155

Section 32. Provides for the applicability of sec. 24 of the Act.

Section 33. Specifies how current licenses issued under AS 08.26.040, repealed by sec. 26, will be affected by the Act.

Statute Change Proposal from 1-22-08 Meeting
(Changes in SB 101)

1. AS 08.26.010. License required.

Except as provided by AS 08.26.180, a person may not engage in the business of providing services as a guardian or a conservator unless the person has a license issued under this chapter. An unlicensed individual may be appointed guardian or conservator and receive compensation approved by the court as long as the individual does not act as guardian or conservator for more than one person or two people who are related to each other.

Here is an alternative way of saying this:

Except as provided by AS 08.26.180, a person may not engage in the business of providing services as a guardian or a conservator unless the person has a license issued under this chapter. An individual is not considered to be engaging in the business of providing these services if the individual acts as guardian or conservator for no more than one person or two people who are related to each other and receives compensation approved by the court for those services.

2. AS 08.26.190. Definitions.

In this chapter,

...
(6) "private professional conservator" means a person who acts as a conservator under AS 13.26.165- 13.26.320 for more than one protected person or two protected persons who are related to each other and receives compensation for acting in that capacity;

...
(8) "private professional guardian" means a person who acts as a guardian under AS 13.26.030- 13.26.155 for more than one ward or two wards who are related to each other and receives compensation for acting in that capacity;

3. Sec. 13.26.300. Claims against estate and protected person; enforcement.

(a) Subject to AS 13.26.285(e), a A conservator shall pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship was established ~~but before the protected person dies~~, upon their presentation and allowance. ...

4. AS 13.26.210. Who may be appointed conservator; priorities.

(a) The court may appoint a competent person, including a private professional conservator, private professional full guardian or the public guardian, as the conservator of the estate of a protected person.

5. Sec. 13.26.135. Notices in guardianship proceedings.

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

6. Sec. 13.26.185. Notice.

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

Reasons for Changes in SB 101

1. AS 08.26.010. License required.

AS 08.26.010 - .190 can be interpreted to prohibit anyone from receiving payment for performing guardian or conservator services unless they are licensed as a private professional guardian or conservator (or they are a regulated financial institution). That means unlicensed friends and family members of the protected persons cannot be paid anything for their work as guardians or conservators. Under appropriate circumstances, friends and family members should be allowed to receive payments. SB 101 currently addresses this problem by amending the definitions in AS 08.26.190 to exclude "immediate family members" from the licensing requirement. (See section 11.) But, it does not define that term and thus leaves it unclear which family members might qualify. It probably would not include nieces, nephews, aunts, etc. It also does not solve the problem for friends of the protected person. The proposed change on page one would give the court discretion to allow unlicensed family/friend guardians and conservators to receive compensation from the protected person's assets in amounts approved by the court.

2. AS 08.26.190. Definitions.

See paragraph 1 above.

3. Sec. 13.26.300. Claims against estate and protected person; enforcement.

The purpose of this change is to correct a drafting error that occurred when this statute was revised in 2004. The purpose of the 2004 change was to clarify that conservators cannot pay claims after the protected person dies. However, the language adopted can be read to have the opposite meaning (i.e., to allow the conservator to continue to pay bills after the protected person's death as long as the debt arose before the person died). Such an interpretation would make it inconsistent with AS 13.26.285(e) and Probate Rule 17(h). AS 13.26.300(a) needs to be amended to clarify that the conservator may not pay bills (other than burial expenses) after the protected person dies, including bills for services performed before the protected person died.

4. AS 13.26.210. Who may be appointed conservator; priorities.

This change does two things. First it corrects an error in the 2004 legislation. Instead of allowing a private professional guardian to be appointed as a conservator, the 2004 legislation should have authorized such appointments for private professional conservators. The requirements for getting a professional guardian's license are quite different from those for getting a professional conservator's license.

The second change is to add private professional "full guardians" to the list of people who may be appointed as a conservator. This is necessary because SB 101 creates this

new kind of professional guardian, the "full" guardian, who must satisfy the requirements for both a guardian's license and a conservator's license.

5. Sec. 13.26.135. Notices in guardianship proceedings.

This change basically recognizes current practice. That is, it clarifies that notice of guardianship hearings can be served on the spouse and parents of the person in need of protection by certified mail, rather than requiring service by a process server. It also allows the courts to authorize other methods of service by court rule.

6. Sec. 13.26.185. Notice.

This is the same change as described in #5 above except that it changes the conservatorship statute, rather than the guardianship statute.

G:\Forms Committee\Draft\PG Drafts\Statute Change Proposal from 1-22-08 meeting.doc

FISCAL NOTE

STATE OF ALASKA
008 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSSB 101(2d L&C)
(S) Publish Date: 1/28/08

Identifier (file name): SB101CS(STA)-CED-OL-01-18-08 Dept. Affected: DCCED
Title: Guardianship and Conservators RDU: Corp, Bus and Prof Licensing (117)
Component: Corp, Bus and Prof Licensing
Sponsor: Senate Labor & Commerce
Requester: Senate Labor & Commerce Component Number: 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This legislation amends various provisions of AS 08.26 Professional Conservators and Guardians and new funds are not required to implement the provisions of this bill. The licensing program is required to cover its costs with licensing fees under AS 08.01.065, and revenue generated by fees are anticipated to cover its full operating costs.

Prepared by: Jennifer Strickler, Chief
Division: Corporations, Business and Professional Licensing
Approved by: Emil Notti, Commissioner
Commerce, Community, and Economic Development

Phone: (907) 465-2144
Date/Time: 1/18/08 6:00 PM
Date: 1/18/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSSB 101(2d L&C)
 (S) Publish Date: 1/28/08

Identifier (file name): SB101-DOA-OPA-11-29-07 Dept. Affected: Administration
 Title: An Act relating to private professional conservators RDU: Legal and Advocacy Services
and private and public guardians Component: Office of Public Advocacy
 Sponsor: Labor and Commerce Component Number: 43
 Requester: _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This bill will amend the current licensure requirements for private professional conservators and guardians so as to eliminate duplicative licenses and fees. This legislation would also impose requirements that public guardians and conservators undergo criminal background checks to determine whether the applicant has been convicted of any crimes of dishonesty within ten years of his or her application, and also require that Public Guardians receive certification from a national guardian/conservatorship organization within one year of employment at OPA. These two requirements are already imposed on private guardians. The costs of the criminal background checks and certification fees will be de minimus, and therefore, OPA submits a zero fiscal note.

Prepared by: Joshua P. Fink, Director
 Division: Office of Public Advocacy
 Approved by: Rachael Petro, Deputy Commissioner
Department of Administration

Phone 907-269-3501
 Date/Time 11/29/07 4:00 p.m.
 Date 11/29/2007

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSSB 101(2d L&C)
 (S) Publish Date: 2/19/08
 Dept. Affected: Health & Social Services
 RDU: Senior and Disabilities Svcs
 Component: Senior/Disabilities Svcs Admin

ID(File name) SB101CS(2d L&C)-DHSS-SDSA-2-5-08
 Title: GUARDIANSHIP AND CONSERVATORS

Sponsor: SENATE (L&C)
 Requester: SENATE FINANCE
 Component No.: 2663

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation		Information					
	Required		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING			0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES								
CHANGE IN REVENUES (0)								

FUND SOURCE (Thousands of Dollars)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 101 CS(2dL&C) directly impacts the Office of Public Advocacy, but will assist Adult Protective Services workers as they work with vulnerable adults. In addition to providing improved guidelines for private guardians, it also provides additional protection for incapacitated persons unjustly involved in interstate guardianship proceedings. This fiscal note will have a zero fiscal impact to Senior and Disabilities Services.

Prepared by: Rod Moline, Division Director
 Division: Senior and Disabilities Services
 Approved by: Karleon Jackson, Commissioner
 Agency: Department of Health and Social Services

Phone 465-3372
 Date/Time 02/04/2008
 Date 02/05/2008

**WHY STATES SHOULD ADOPT
THE UNIFORM ADULT GUARDIANSHIP
AND PROTECTIVE PROCEEDINGS JURISDICTION ACT
(2007)**

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) received its final approval at the National Conference of Commissioners for Uniform State Laws' (NCCUSL) 2007 annual meeting. The UAGPPJA deals primarily with jurisdictional, transfer and enforcement issues relating to adult guardianships and protective proceedings. There are a number of reasons why every state should adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

- *Provides procedures to resolve interstate jurisdiction controversies.* The UAGPPJA creates a process for determining which state will have jurisdiction to appoint a guardian or conservator if there is a conflict by designating that the individual's "home state" has primary jurisdiction, followed by a state in which the individual has a "significant-connection." Under certain prescribed circumstances, another state may be chosen if it is the more appropriate forum.
- *Facilitates transfers of guardianship cases among jurisdictions.* The UAGPPJA specifies a procedure for transferring a guardianship or conservatorship to another state and for accepting a transfer, helping to reduce expenses and save time while protecting persons and their property from potential abuse.
- *Provides for recognition and enforcement of a guardianship or protective proceeding order.* The UAGPPJA helps to facilitate enforcement of guardianship and protective orders in other states by authorizing a guardian or conservator to register these orders in other states.
- *Facilitates communication and cooperation between Courts of different jurisdictions.* Permits communication between courts and parties of other states, records of the communications, and jurisdiction to respond to requests for assistance from courts in other states.
- *Addresses emergency situations and other special cases.* A court in the state where the individual is physically present can appoint a guardian in the case of an emergency. Also, if the individual has real or tangible property located in a certain state, the court in that jurisdiction can appoint a conservator for the property located there.
- *Authorized guardians to exercise the powers authorized in the order and addresses international orders.*

UNIFORMITY

This Act will provide uniformity and reduce conflicts among the states. The UAGPPJA will also help save time for those who are serving as guardians and conservators, allowing them to make important decisions for their loved ones as quickly as possible. Every state should act quickly to adopt the Uniform Adult Guardianship and Protective Proceeding Act.

NATIONAL GUARDIANSHIP FOUNDATION

RESOLUTION IN SUPPORT OF:

THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

JURISDICTION ACT

WHEREAS population mobility has left courts facing many dilemmas and challenges concerning which of several states have jurisdiction over guardianship and protective proceedings;

WHEREAS the National Conference of Commissioners on Uniform State Laws endeavors to carry forward the groundbreaking work of the National College of Probate Judges in its National Probate Court Standards on interstate jurisdiction transfers by drafting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act;

WHEREAS this Uniform Act, if enacted, will fulfill a key recommendation of the 2001 Wingspan National Guardianship Conference by providing procedures to resolve interstate jurisdiction controversies and to facilitate transfers of guardianship cases among jurisdictions;

WHEREAS the Act provides for the recognition and enforcement of a guardianship or protective proceedings orders, and facilitates the communication and cooperation between Courts of different jurisdictions concerning guardianship or protective proceedings;

WHEREAS the Act provides for a method of determining the appropriate initial forum for such proceedings, for a method of obtaining an order to transfer jurisdiction over such proceedings to another state, and for the recognition and registration of guardianship or protective orders across state lines,

WHEREAS the application and construction of this Uniform Act will promote uniformity of the law with respect to jurisdictional issues of guardianship and protective proceedings for adults among states that enact it;

WHEREAS the National Guardianship Foundation is involved in the process of drafting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act with the help of the AARP, American Bar Association, the National Guardianship Association, the National College of Probate Judges, the American College of Trust and Estate Counsel, the National Academy of Elder Law Attorneys, and other interested groups; and

WHEREAS the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, if enacted, can help effectively address the dilemmas and challenges concerning jurisdiction of guardianship and protective proceedings for adults;

THEREFORE BE IT RESOLVED that the National Guardianship Foundation supports the efforts of the National Conference of Commissioners on Uniform State Laws to promulgate the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

NATIONAL COLLEGE OF PROBATE JUDGES

RESOLUTION IN SUPPORT OF:

THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

JURISDICTION ACT

WHEREAS guardianship and protective proceedings for adults has left Courts facing many dilemmas and challenges concerning jurisdiction over these proceedings,

WHEREAS the National College of Probate Judges has performed groundbreaking work on this issue in the National Probate Court Standards for some time in order to provide statutory direction for this complex problem,

WHEREAS the National Conference of Commissioners on Uniform State Laws endeavors to carry forward this work by drafting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act,

WHEREAS the Act provides for the recognition and enforcement of a guardianship or protective proceedings order of a foreign country, provides for a process of communication and cooperation between Courts of different jurisdictions concerning guardianship or protective proceedings, provides that a court on its own motion may order the testimony of a person to be taken across state lines and may prescribe the manner in which and terms upon which the testimony is taken,

WHEREAS the Act provides for a method of determining the appropriate initial forum for such proceedings, for a method of obtaining an order to transfer jurisdiction over such proceedings to another state, and for the recognition and registration of guardianship or protective orders across state lines,

WHEREAS the application and construction of this Uniform Act, if enacted, will promote uniformity of the law with respect to jurisdictional issues of guardianship and protective proceedings for adults among states that enact it,

WHEREAS the National College of Probate Judges is involved in the process of drafting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act with the help of the American Association of Retired Persons, National Guardianship Association, and the National Association of Elder Law Attorneys,

WHEREAS this Uniform Act, if enacted, will fulfill a key recommendation of the 2001 Wingspan National Guardianship Conference by providing procedures to resolve interstate jurisdiction controversies and to facilitate transfers of guardianship cases among jurisdictions.

WHEREAS the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, if enacted, can effectively address the dilemmas and challenges concerning jurisdiction of guardianship and protective proceedings for adults,

HEREFORE BE IT RESOLVED that the National College of Probate Judges supports the efforts of the National Conference of Commissioners on Uniform State Laws in its effort to create the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

STATE OF ALASKA

DEPT. OF HEALTH & SOCIAL SERVICES

Alaska Commission on Aging

SARAH PALIN, GOVERNOR

P.O. BOX 110693
JUNEAU, ALASKA 99811-0693
PHONE: (907) 465-3250
FAX: (907) 465-1398

To: Members of the Alaska Senate
From: The Alaska Commission on Aging
Re: Support Letter for SB 101 (Senate Labor and Commerce)
Date: February 25, 2008

On behalf of the Alaska Commission on Aging (ACoA), we encourage support of SB 101, a Senate Labor and Commerce Committee bill, which will create several consumer safeguards for guardianships and conservatorship regulations. The Commission agrees with the Alaska Attorney General's Office that Alaska should adopt a uniform law on guardianship similar to what has been adopted in other states and is recommended by the National Association of Attorney Generals.

Incapacitated older Alaskans are at risk of abuse, neglect, and exploitation by guardians and conservators. SB 101 will help to protect vulnerable older persons.

In addition, the Commission believes that states should adopt consistent standards to protect the rights of vulnerable persons and to prevent abuse in guardianship proceedings. Older Alaskans, like other older Americans, often have ties to other states. Consistent laws across states benefit everyone, no matter where they may be, and helps to prevent problems.

The Commission encourages support of SB 101. Please feel free to contact Denise Daniello, ACoA's executive director at 465-4879, should you have questions regarding our position of this bill. Thank you for your consideration.

Banarsi Lal
Chair, Alaska Commission on Aging

Denise Daniello
ACoA Executive Director

Cc: Senator Charlie Huggins
Senator Kim Elton
Senator Donald Olson
Senator Joe Thomas
Senator Fred Dyson
Senator Johnny Ellis
Senator Albert Kookesh
Senator Lesil McGuire
Senator Stedman
Senator Gary Stevens
Senator Gene Therriault
Senator Con Bunde
Senator John Cowdery
Senator Bettye Davis
Senator Hollis French
Senator Lyda Green
Senator Lyman Hoffman
Senator Joe Thomas
Senator Thomas Wagoner
Senator Bill Wielechowski
Senator Gary Wilken



March 11, 2008

The Honorable Kurt Olson, Chair
House Labor and Commerce Committee
Alaska State Capitol, Room 408
Juneau, AK 99801-1182

RE: SB 101 (Senate Labor and Commerce Committee)--Support

Dear Chair Olson:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the House Labor and Commerce Committee to support SE: 101.

SB 101 is, in AARP's view, a consumer safeguard bill that builds on previous work to make certain our guardianship and conservatorship regulations work as they are intended.

Incapacitated elders are at risk of abuse, neglect and exploitation by guardians and conservators. SB 101 will help guard against fiduciary abuse.

As the need for guardians has grown, courts have found it more difficult to find family members or friends able and willing to accept the responsibilities of guardianship. Professional guardians and conservators are used more and more often. SB 101 will help improve the quality of guardians and prevent abuses. As Alaska insists on training and certification and reporting, we will ensure that all guardians are better informed about their responsibilities and the requirements for caring for incapacitated people.

AARP considers SB 101 as one more significant step creating safeguards in what will only become a growing industry. Government oversight is essential for quality control.


The Attorney General is recommending that Alaska adopt a uniform law on guardianship which is being promoted by the National Association of Attorneys General. This is now part of SB 101 and we feel it is a very comprehensive improvement to the original bill.

We urge an "AYE" vote on SB 101.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-'62-3314).

Thank you for your consideration.

Sincerely,



Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Vice-Chair Mark Neuman
Representative Carl Gatto
Representative Gabrielle LeDoux
Representative Jay Ramras
Representative Bob Buch
Representative Berta Gardner
Senator Johnny Ellis



**National
Guardianship
Foundation**

P.O. Box 5704 - Harrisburg, PA 17110 - (717) 238-4689 phone - (717) 238-9985 fax
www.guardianship.org

May 7, 2007

National Conference of Commissioners on
Uniform State Laws (NCCUSL)
c/o David G. Nixon, Chairman
211 E. Ontario Street
Suite 1300
Chicago, IL 60611

Dear Mr. Nixon:

The National Guardianship Foundation (NGF) Board of Trustees met in late April and voted unanimously to endorse the attached resolution related to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Should you have any questions, please don't hesitate to contact me directly. Thank you for your hard work on this important issue.

Sincerely,

Denise R. Calabrese
Executive Director

cc: NGF President Gary Beagle
NGA Executive Director Terry Hammond
David English

NATIONAL GUARDIANSHIP FOUNDATION

RESOLUTION IN SUPPORT OF:

THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

JURISDICTION ACT

WHEREAS population mobility has left courts facing many dilemmas and challenges concerning which of several states have jurisdiction over guardianship and protective proceedings;

WHEREAS the National Conference of Commissioners on Uniform State Laws endeavors to carry forward the groundbreaking work of the National College of Probate Judges in its National Probate Court Standards on interstate jurisdiction transfers by drafting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act;

WHEREAS this Uniform Act, if enacted, will fulfill a key recommendation of the 2001 Wingspan National Guardianship Conference by providing procedures to resolve interstate jurisdiction controversies and to facilitate transfers of guardianship cases among jurisdictions;

WHEREAS the Act provides for the recognition and enforcement of a guardianship or protective proceedings orders, and facilitates the communication and cooperation between Courts of different jurisdictions concerning guardianship or protective proceedings;

WHEREAS the Act provides for a method of determining the appropriate initial forum for such proceedings, for a method of obtaining an order to transfer jurisdiction over such proceedings to another state, and for the recognition and registration of guardianship or protective orders across state lines,

WHEREAS the application and construction of this Uniform Act will promote uniformity of the law with respect to jurisdictional issues of guardianship and protective proceedings for adults among states that enact it;

WHEREAS the National Guardianship Foundation is involved in the process of drafting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act with the help of the AARP, American Bar Association, the National Guardianship Association, the National College of Probate Judges, the American College of Trust and Estate Counsel, the National Academy of Elder Law Attorneys, and other interested groups; and

WHEREAS the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, if enacted, can help effectively address the dilemmas and challenges concerning jurisdiction of guardianship and protective proceedings for adults;

THEREFORE BE IT RESOLVED that the National Guardianship Foundation supports the efforts of the National Conference of Commissioners on Uniform State Laws to promulgate the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

STATE OF ALASKA

DEPT. OF HEALTH & SOCIAL SERVICES

Alaska Commission on Aging

SARAH PALIN, GOVERNOR

P.O. BOX 110693
JUNEAU, ALASKA 99811-0693
PHONE: (907) 465-3250
FAX: (907) 465-1398

To: Members of the Alaska Senate
From: The Alaska Commission on Aging
Re: Support Letter for SB 101 (Senate Labor and Commerce)
Date: February 25, 2008

On behalf of the Alaska Commission on Aging (ACoA), we encourage support of SB 101, a Senate Labor and Commerce Committee bill, which will create several consumer safeguards for guardianships and conservatorship regulations. The Commission agrees with the Alaska Attorney General's Office that Alaska should adopt a uniform law on guardianship similar to what has been adopted in other states and is recommended by the National Association of Attorney Generals.

Incapacitated older Alaskans are at risk of abuse, neglect, and exploitation by guardians and conservators. SB 101 will help to protect vulnerable older persons.

In addition, the Commission believes that states should adopt consistent standards to protect the rights of vulnerable persons and to prevent abuse in guardianship proceedings. Older Alaskans, like other older Americans, often have ties to other states. Consistent laws across states benefit everyone, no matter where they may be, and helps to prevent problems.

The Commission encourages support of SB 101. Please feel free to contact Denise Daniello, ACoA's executive director at 465-4879, should you have questions regarding our position of this bill. Thank you for your consideration.



Banarsi Lal
Chair, Alaska Commission on Aging



Denise Daniello
ACoA Executive Director

Cc: Senator Charlie Huggins
Senator Kim Elton
Senator Donald Olson
Senator Joe Thomas
Senator Fred Dyson
Senator Johnny Ellis
Senator Albert Kookesh
Senator Lesil McGuire
Senator Stedman
Senator Gary Stevens
Senator Gene Therriault
Senator Con Bunde
Senator John Cowdery
Senator Bettye Davis
Senator Hollis French
Senator Lyda Green
Senator Lyman Hoffman
Senator Joe Thomas
Senator Thomas Wagoner
Senator Bill Wielechowski
Senator Gary Wilken

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Toll free Fax 1-800-875-7505

September 13, 2007

Deborah Behr
State of Alaska
Department of Law
Legislation and Regulations Section
Juneau, Alaska 99801

RE: Comments on Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

Dear Ms. Behr:

Thank you for your e-mail of August 29, 2007. I apologize for the delay in responding.

I understand the proposed act attempts to borrow from other disciplines where interstate cooperation between state courts is becoming more and more of a necessity as America's population becomes more fluid. You have asked me for any comments I might have regarding the proposed draft act from the perspective of someone who has practiced guardianship law for quite a number of years in Alaska.

My understanding of the proposed model act is that, among other things, it improves upon existing guardianship statutes by providing the courts of different states a more orderly and definitive means of settling upon proper venue, and making guardianship and conservatorship arrangements more readily transferable from one state to another to which a ward might relocate.

Venue and Jurisdiction Treatment under Alaska's Current Guardianship Statute

Alaska's current statute regarding protective proceedings (AS 13.26.090 et. seq.)

was adopted in great part from the Uniform Probate Code. Provisions therein regarding venue and jurisdictional issues are notable for their brevity. (The Uniform Probate Code and, hence, the Alaska statute appear to address these concepts inseparably.) Yet it is understandable how the need for more depth has come about as witnessed by the introduction of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. For example, with regard to venue, the current guardianship statute simply states in part that "The venue of guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present." (AS 13.26.100).

With regard to the more complex, competing jurisdictional issues between courts of different states, the current guardianship statute has language that is somewhat similar to that under the proposed act, but far less specific. AS 13.26.080 and AS 13.26.105, for example, state in part:

Proceedings subsequent to appointment; venue. (a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over a resignation, removal, accounting and other proceedings relating to the guardianship.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, which ever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

Comments on the Proposed
Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

With the above background, my comments upon the proposed act are as follows:

1. Article 1 Section 102. Definitions. (Page 2)

Since the model act provides its own definition section, it may be advisable to compare and coordinate the definition section under the Alaska guardianship statute to be

certain that there are no conflicts. (See AS 13.06.050 and AS 13.26.005) It is clear that the intent of the model act is to work in conjunction with the existing guardianship statute; and, indeed, the model act makes several references over to the state's guardianship statute for application thereunder. While many of the terms defined under the model act are similar to those provided under the guardianship statute, there are some notable differences. For example, the model act defines "Party" to mean . . . "the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardian or protective proceeding." This definition provides no guidance to a court as to who might be viewed as an appropriate party to a closed protective proceeding. The Alaska guardianship statute does not define the term "party." However, AS 13.06.050(24) uses the term "interested person" that essentially encompasses the same idea strived at in Section 102 as to who is a proper person to participate in such a proceeding. "Interested person" has become a term of art in the application of the Probate Code, especially in protective proceedings. The term is often relied upon by the Alaska court to provide the judicial officer discretion in preventing persons without a sufficient interest in or nexus to the respondent from appearing or inserting himself/herself in the closed and confidential protective proceeding. Hence, before any person attempts to appear in a closed guardianship/conservatorship proceeding as a "party," normally the court will require that person to file a motion to intervene, and set forth his/her interest and connection with the respondent. The term "interested person" is not defined in the model act, yet the model act itself relies upon the term. (See Section 301(c) at page 10, for example.) Presumably, the Alaska courts will simply apply the Alaska guardianship statute and its precedent in applying this term to the model act.

For this reason, the definition of "Party" set out in Section 102(8), at Page 2 of the proposed statute may be modified by adding the language as follows:

"Party" means the respondent, petitioner, guardian, conservator, or any other interested person allowed by the court to participate in a guardianship or protective proceeding.

2. Section 105. Cooperation Between Courts. (Page 4)

This section appears to expand significantly upon such provisions as AS 13.26.080 that invites courts of different jurisdictions to communicate regarding conflicting jurisdictional issues. A question that comes to mind here is how this section

will actually work in practice. The provision allows for a court in one state to request that the court of another state issue various orders regarding a person situated in that foreign state. However, as a procedural matter, how does a court issue an order when no open action or proceeding has been filed in that court, from which such an order can proceed? It is not uncommon for statutes to recognize a court's prerogative to initiate an action upon "its own motion" in the body of an existing action brought before it (see Section 301(c) of the proposed statute, for example). However, it is doubtful that a court will take the initiative to file its own action for the purpose of entering an order therein. Fundamentally, the court's powers and jurisdiction rests upon the filing of an action upon a real case in controversy before it, and its issuance of an order at the request of a foreign court for some specific relief without the existence of any filed action in that state, would seem to raise some fundamental constitutional, separation issues. (Alaska Const., Art. IV, Sec. 1, AS 22.10.020(a), Alaska Rules of Civil Procedure 2 and 3.)

Perhaps what this provision is really envisioning is that one of the parties to the protective proceeding will have caused to be filed in the foreign jurisdiction some ancillary action, such as a "Petition to accept proceedings transferred from another state." (See Section 302, at Page 11.) If that were the case, it would seem, perhaps, that one way of giving more clarity to Section 105, the purpose of which is to encourage cooperation between courts of different states, is to add a phrase referencing Section 105 within the provisions of Section 302(a) at Page 11. This section allows for the guardian or conservator of one state armed with a provisional order from the foreign state to petition the court of the state to which the guardianship/conservatorship is sought to be transferred. That section might be broadened to allow for the "provisional orders" of the foreign state to concern itself not merely with the sole issue of approving and recommending the transfer of the particular guardianship/conservatorship case, but also recommending the issuance of orders concerning such preliminary matters as set out in Section 105 (1) through (6) as well. Therefore, it is suggested that Section 302(a) be modified as follows:

"(a) Upon issuance of a *provisional* order in another state to transfer a guardianship or conservatorship to this state under procedures similar to those in Section 301, **or to obtain particular relief similar to that set forth in Section 105**, the guardian or conservator shall petition the court in this state to accept the guardianship or conservatorship, **or to obtain the particular relief sought**. The petition must include a certified copy of the other state's provisional order."

3. Section 204. Special Cases (Page 7)

Section 204(b), at Page 7 contains the emphatic language with regard to emergency guardianships entered in one state, not the home state of the respondent, whereby upon the direction of the respondent's home state court. ". . . the court [of the non-home state] **shall** dismiss the proceedings at the direction of the court in such other state, if any, whether dismissal is requested before or after the emergency appointment." (Bracketed material and emphasis added.) I don't think this is what the proposed statute really means, as there are other provisions that seem to attach more weight and respect to the judgment of the court handling emergency protective proceedings. Yet the "**shall**" language seems to stick out here like a "sore thumb." I can assure you that no self respecting judicial officer would simply dismiss an emergency guardianship proceeding in this state simply upon the direction of a foreign court. If a respondent having a home state other than Alaska, should be the subject of a protective proceeding in this state, that person's presence in this state gives our court jurisdiction. (AS 13.26.100) The State has a right and duty of public safety with regard to all persons within its borders. Should that respondent's health and safety be at issue, and continue to need protection in this state, why would a foreign court's order to dismiss those proceedings trump the Alaska court's intervention? The Alaska court surely would have more access to first hand knowledge of the immediate situation to deal with it than would a foreign court. One can imagine the scenario of an out of state visitor in critical condition in a hospital in Alaska whereby immediate intervention is required. Even though the court of this state would in all likelihood not abide by a foreign court's direction to dismiss such a proceeding brought in our state, why even "muddy" the waters by using "**shall**" language in this provision? Perhaps "quick-fix" corrective language might be:

. . . the court, **within its discretion**, shall dismiss the proceeding at the direction of the court in such other state, if any, whether dismissal is requested before or after the emergency appointment.

4. Section 301. Petition to Transfer Jurisdiction to Another State.

This section, creating an orderly procedure for the transfer of on-going guardianships from one state to another, appears to be the very heart of the model act. Yet, it raises issues of the greatest concern.

Section 301(a)

Section 301 (a) allows for the "guardian or conservator" to petition for such a transfer. What about the ward (or respondent)? Shouldn't he or she be entitled to so petition? What about an "interested person" mentioned in Section 301(c)? Although the model act does not define "interested person," it may well be that other persons or entities may wish to proceed with such a petition. For example, the State of Alaska, Division of Adult Protective Services, acting through the Attorney General's office, may have reason to see a guardianship transferred to a foreign jurisdiction where the ward and guardian now reside, and where more direct court oversight in the foreign state is more appropriate. Under such circumstances the State of Alaska, Division of Adult Protective Services may wish to file a motion to intervene in the Alaska guardianship proceeding and seek a provisional order for transfer. The guardian or conservator in such instance may not have the legal acumen or the funds to initiate such a transfer proceeding on his or her own. Furthermore, the court visitor, who may be appointed by the court to initiate a three year review of a guardianship, (AS13.26.257(b)) may request the court for a review hearing recommending that a guardianship be transferred to another state. At that point, the court might wish to appoint an attorney or guardian ad litem for the ward for the purpose of exploring such option, if it is the ward's desire or in his best interest.

Therefore, it is suggested that Section 301(a) might be modified to read as follows:

(a) Following the appointment of a guardian or conservator, the guardian or conservator, **protected person, or other interested person** may petition the court to transfer the guardianship or conservatorship to another state.

Section 301(c)

Section 301(c) appears to deny fundamental due process rights to the ward (respondent) that are well addressed under Alaska's guardianship statute. AS 13.26.106 through AS 13.26.113 set out some of the procedural safeguards in the actions to appoint a guardian or conservator for the respondent. These include, for example, a hearing before the court and notice thereof, appointment of an attorney for the respondent, and the appointment of a court visitor who would investigate the matter and report back to the court with a written report. The proposed uniform act does require that "Notice of the petition to transfer guardianship.... be given by the petitioner to those persons that would be entitled to notice of a petition in the state for the appointment of a guardian..." (Section 301(b)) However, the model act does not afford other fundamental due process safeguards found in the State's guardianship statute when a petition is filed.

For example, a hearing is required under the State's guardianship statute. (See AS 13.26.106(a).) Section 301(c) of the model act does away with the necessity of a hearing unless so requested by the ward (respondent) or another "interested person." The model act further abbreviates the due process safeguards in protecting the interests of the ward (respondent) set forth in the Alaska guardianship statute by completely eliminating the requirements for the appointment of an attorney for the ward (respondent) or for the appointment of the court visitor. (See AS 13.26.106(b) and (c), also AS 13.26.125(c) and AS 13.26.310 for the Alaska's guardianship statute's provisions for such appointments.)

While a certain degree of streamlining is advantageous with regard to a petition that simply requests that an existing guardianship matter to be transferred to another state, the statute loses its logic and cohesiveness by adopting some due process procedures from the adopting state's primary guardianship statute, but not others. For example, what would be the point under the proposed statute of providing notice to the ward of an impending transfer petition, and even providing him/her a right to demand a hearing, if the ward is unable to read or comprehend the notice because of disability?

Furthermore, there are potentially significant personal and property rights at stake in a decision to move one's guardianship from one state to another. At any given time, a number of incapacitated Alaskans, including Alaska natives, are housed in residential facilities outside of the State of Alaska for periods of years at a time. This occurs more often than not because Alaska, still enjoying the status of a "frontier" state, does not yet have the specialized, long-term care medical facilities as are found in other states. Long term head injury rehabilitation facilities is an example that comes readily to mind. Nevertheless, an incapacitated person's long absence from the State of Alaska, should not be cause to have his/her guardianship transferred to the state wherein long term care services are being received merely because he/she has not physically resided in Alaska for a long period of time. The ward may wish to maintain his/her Alaska residency, and the continuation of the Alaska guardianship may be one important remaining connection he/she has to his/her State, both psychologically and as a concrete indicator of intent to remain an Alaska resident while receiving medical care services "outside". There may also be important property right benefits jeopardized if such an order of transfer were viewed as an indicia of state residency for other purposes, such as, for example, Alaska Medicaid eligibility.

The apparent intent of the proposed statute (to streamline the process of transfers) is an admirable one. However, I believe that it would be a serious mistake to completely do away with the requirement of re-appointing a visitor and court appointed attorney for

the ward (respondent) in a transfer proceeding under the uniform act. The court appointed visitor acts in a semi-judicial capacity as the "eyes and ears" of the court. In order for the court to make the findings under the model act as set forth in Section 301(e)(1)(2) and (3), the investigation and the written report of the visitor would be invaluable. Furthermore, the re-appointment of the court appointed attorney in such a case would serve not only to assure that the rights of the ward (respondent) are protected, but would be of great benefit in those cases where the guardian/conservator files a petition to transfer pro se. If the court appointed attorney knew that the ward was fully behind such a petition or (in the role of guardian ad litem) perceived the petition to be in the ward's best interest, the court appointed attorney might be instrumental in navigating through the procedural steps mandated under the model act to expedite the process.

Based upon the experience that I have in the Probate Court at Anchorage, it is not likely that there will be a high volume of cases for transfer of guardianships in any given year. Therefore, it should not impose any significant burden upon the overall administration of guardianship cases in Alaska to add such cases to the existing visitor and court appointed attorney case load.

Therefore, in my view, the model act might be modified by adding the following sentence to the end of Section 301(a) so that with the previous suggested changes, the entire section would read:

(a) Following the appointment of a guardian or conservator, the guardian or conservator, protected person or other interested person may petition the court to transfer the guardianship or conservatorship to another state. Upon the filing of the petition, the court, on its own motion, or upon the request of the petitioner, the incapacitated or protected person, may appoint a visitor and/or attorney for the respondent as provided for in petitions for guardianship and conservatorship in this state.

Thank you for the invitation and the opportunity to comment on this proposed legislation. I congratulate those who have labored hard and committed themselves to the

Ms. Bchr

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creation of this long-needed, proposed uniform legislation. They have done very fine and expert work with challenging subject matter. I hope my comments will be helpful and of some merit.

Sincerely,

Ernest M. Schlereth
Attorney at Law



April 2, 2008

To: Members of the Alaska House of Representatives

RE: SB 101 (Senate Labor and Commerce Committee)—Support

On behalf of the members of AARP in Alaska, we encourage you to support SB 101, authored by the Senate Labor and Commerce Committee.

SB 101 is, in AARP's view, a consumer safeguard bill that builds on previous work to make certain our guardianship and conservatorship regulations work as they are intended.

Incapacitated elders are at risk of abuse, neglect and exploitation by guardians and conservators. SB 101 will help guard against fiduciary abuse.

As the need for guardians has grown, courts have found it more difficult to find family members or friends able and willing to accept the responsibilities of guardianship. Professional guardians and conservators are used more and more often. SB 101 will help improve the quality of guardians and prevent abuses. As Alaska insists on training and certification and reporting, we will ensure that all guardians are better informed about their responsibilities and the requirements for caring for incapacitated people.

AARP considers SB 101 as one more significant step creating safeguards in what will only become a growing industry. Government oversight is essential for quality control.

The Attorney General is recommending that Alaska adopt a uniform law on guardianship which is being promoted by the National Association of Attorneys General. This is now part of SB 101 and we feel it is a very comprehensive improvement to the original bill.

We urge an "AYE" vote on SB 101.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Marie Darlin".

Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)