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3 SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR SB366
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8 SYNOPSIS: Existing law provides for the appointment of
9 guardians and conservators for incapacitated
10 persons.

11 This bill would allow for the removal of a
12 guardianship or conservatorship matter from the
13 probate court to the circuit court under certain
14 circumstances.

15 This bill would prohibit a temporary
16 guardian from serving for a period of more than 30
17 days unless there are exigent circumstances as
18 determined by the court following a hearing to
19 determine the need for extension of the
20 appointment.

21 This bill would require that, in any
22 proceeding for the appointment of a guardian of an
23 incapacitated person, notification regarding a
24 hearing be given to the attorney for the person
25 alleged to be incapacitated, as well as any adult
26 relative within three degrees of kinship of that
27 person, if there are no adult children.

1 This bill would prohibit automatic renewals
2 of orders appointing a temporary guardian for an
3 incapacitated person.

4 This bill would require conservators to
5 annually report to the court for administration of
6 a conservatorship.

7 This bill would prohibit a conservator from
8 having authority to dismiss an attorney who was
9 retained by an incapacitated person to challenge
10 the initial order of appointment of conservator,
11 and from refusing to allow the attorney to meet
12 with the incapacitated person or participate in
13 proceedings related to the conservatorship without
14 notice, hearing, and court order.

15 This bill would also prohibit, unless
16 specifically directed by the court, a conservator
17 from sharing medical records and reports, wills,
18 investment reports, deeds, or other confidential
19 information with any person who filed the petition
20 for conservatorship or with any attorney
21 representing a petitioner.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 Relating to guardianships and conservatorships; to
2 amend Sections 26-2-2, 26-2-50, 26-2A-102, 26-2A-103,
3 26-2A-107, 26-2A-133, 26-2A-147, 26-2A-152, and 26-5-2, Code
4 of Alabama 1975; to allow for the removal of a guardianship or
5 conservatorship matter from the probate court to the circuit
6 court under certain circumstances; to prohibit a temporary
7 guardian from serving for more than a certain amount of time
8 except for in certain circumstances; to expand the list of
9 people who should be notified in any proceeding for the
10 appointment of a guardian of an incapacitated person; to
11 prohibit automatic renewals of orders appointing a temporary
12 guardian for an incapacitated person; to require conservators
13 to annually report to the court for administration of a
14 conservatorship; to further provide for the duties and
15 dismissal of an attorney under certain conditions who was
16 retained by an incapacitated person; and to prohibit, unless
17 specifically directed by the court, a conservator from sharing
18 certain information with certain people.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Sections 26-2-2, 26-2-50, 26-2A-102,
21 26-2A-103, 26-2A-107, 26-2A-133, 26-2A-147, 26-2A-152, and
22 26-5-2, Code of Alabama 1975, are amended to read as follows:

23 "§26-2-2.

24 "The administration or conduct of any guardianship
25 or conservatorship of a minor or incapacitated person may be
26 removed from the probate court to the circuit court, at any
27 time before the final settlement thereof by the guardian or

1 conservator of any ~~such~~ guardianship or conservatorship or
2 guardian ad litem or next friend of ~~such~~ the ward or anyone
3 entitled to support out of the estate of ~~such~~ the ward without
4 assigning any special equity, and an order of removal ~~must~~
5 shall be made by the court or judge upon the filing of a ~~sworn~~
6 verified petition by any ~~such~~ guardian or conservator or
7 guardian ad litem or next friend for the ward or ~~such~~ a person
8 entitled to support out of the estate of ~~such~~ the ward,
9 reciting in what capacity the petitioner acts and that in the
10 opinion of the petitioner ~~such~~ the guardianship or
11 conservatorship can be better administered in the circuit
12 court than in the probate court.

13 "§26-2-50.

14 "The general conservator of the county ~~must~~ shall
15 only be appointed conservator of an incapacitated person if no
16 other suitable person applies for appointment and qualifies
17 and if there ~~be~~ is no general conservator, the sheriff must be
18 appointed.

19 "§26-2A-102.

20 "(a) Except as provided by subsection (e), an
21 incapacitated person or any person interested in the welfare
22 of the incapacitated person may file a verified petition for
23 appointment of a limited or general guardian.

24 "(b) After the filing of a petition, the court shall
25 set a date for hearing on the issue of incapacity so that
26 notices may be given as required by Section 26-2A-103, and,
27 unless the allegedly incapacitated person is represented by

1 counsel, appoint an attorney to represent the person in the
2 proceeding. The person so appointed may be granted the powers
3 and duties of a guardian ad litem. The person alleged to be
4 incapacitated shall be examined by a physician or other
5 qualified person appointed by the court who shall submit a
6 report in writing to the court. The person alleged to be
7 incapacitated also shall be interviewed by a court
8 representative sent by the court. The person granted the
9 powers and duties of a guardian ad litem shall not also serve
10 as the court representative. The court representative also
11 shall interview the person who appears to have caused the
12 petition to be filed and any person who is nominated to serve
13 as guardian and visit the present place of abode of the person
14 alleged to be incapacitated and the place it is proposed that
15 the person will be detained or reside if the appointment is
16 made and submit a report in writing to the court. The court
17 may utilize the service of any public or charitable agency as
18 an additional court representative to evaluate the condition
19 of the allegedly incapacitated person and to make appropriate
20 recommendations to the court.

21 "(c) A person alleged to be incapacitated is
22 entitled to be present at the hearing in person. The person is
23 entitled to be represented by counsel, to present evidence, to
24 cross-examine witnesses, including the court-appointed
25 physician or other qualified person and any court
26 representative, and upon demand to trial by jury as provided
27 in Section 26-2A-35. The issue may be determined at a closed

1 hearing if the person alleged to be incapacitated or counsel
2 for the person so requests.

3 "(d) Any person may apply for permission to
4 participate in the proceeding, and the court may grant the
5 request, with or without hearing, upon determining that the
6 best interest of the alleged incapacitated person will be
7 served thereby. The court may attach appropriate conditions to
8 the permission.

9 "(e) The custodial parent or parents or an adult
10 custodial sibling of an adult child who is incapacitated by
11 reason of an intellectual disability, may file, in lieu of a
12 petition, a written request to be appointed guardian of his or
13 her adult child or his or her adult sibling in order to
14 continue performing custodial and other parental
15 responsibilities or family responsibilities, or both
16 responsibilities, for the child after the child has passed his
17 or her minority. The court may waive any or all procedural
18 requirements of the Uniform Guardianship Act, including notice
19 and service, and appointments, and interviews. The adult child
20 alleged to be incapacitated shall have had an examination by a
21 physician or other qualified person and furnish a written
22 report of the findings to the court.

23 "In lieu of a hearing, the probate court shall hold
24 an informal hearing with the custodial parent or custodial
25 parents or custodial adult sibling requesting the
26 guardianship, the adult child for whom the guardianship is

1 sought, and a guardian ad litem for the adult child chosen by
2 the judge of probate.

3 "Following the interview, the court may do any of
4 the following:

5 "(1) Issue an order appointing the custodial parent
6 or custodial parents or custodial sibling as guardian of the
7 adult child as in any other proceeding pursuant to this
8 section.

9 "(2) Deny the request for appointment as guardian
10 pursuant to the special proceedings allowed only for a
11 custodial parent or custodial parents or custodial sibling.

12 "(3) Delay a determination on the request to gather
13 additional information in compliance with one or more of the
14 usual requirements for appointments, interviews, or
15 examinations by physicians or other qualified persons.

16 "§26-2A-103.

17 "(a) In a proceeding for the appointment of a
18 guardian of an incapacitated person, and, if notice is
19 required in a proceeding for appointment of a temporary
20 guardian, notice of hearing must be given to each of the
21 following:

22 "(1) The person alleged to be incapacitated, his or
23 her attorney if he or she has retained one, his or her ~~her or~~
24 his spouse, (if any), and adult children, or if none, parents
25 and adult relatives within three degrees of kinship, if
26 known.

1 "(2) Any person who is serving as guardian,
2 conservator, or who has the care and custody of the person
3 alleged to be incapacitated~~;~~.

4 "(3) In case no other person is notified under
5 paragraph (1), at least one of the nearest adult relatives
6 residing in this state, if any can be found~~;~~and.

7 "(4) Any other person as directed by the court.

8 "(b) Notice of hearing on a petition for an order
9 subsequent to appointment of a guardian must be given to the
10 ward, the guardian, and any other person as ordered by the
11 court.

12 "(c) Notice must be served personally on the alleged
13 incapacitated person. Notices to other persons as required by
14 subsection (a) (1) must be served personally if the person to
15 be notified can be found within the state. In all other cases,
16 required notices must be given as provided in Section
17 26-2A-50.

18 "(d) The person alleged to be incapacitated may not
19 waive notice.

20 "§26-2A-107.

21 "(a) If an incapacitated person has no guardian, an
22 emergency exists, and no other person appears to have
23 authority to act in the circumstances, on appropriate filing
24 of a verified petition the court, without notice, may appoint
25 a temporary guardian whose authority may not extend beyond 30
26 days and who may exercise those powers granted in the order.
27 For the purposes of this section, an emergency is a

1 circumstance that likely will result in substantial harm to a
2 respondent's health, safety, or welfare, and for which the
3 appointment of a guardian is necessary because no other person
4 has authority and is willing to act on the respondent's
5 behalf.

6 "(b) If the appointed guardian is not effectively
7 performing duties and the court further finds that the welfare
8 of the incapacitated person requires immediate action, it may
9 appoint, with or without notice, a temporary guardian for the
10 incapacitated person having the powers of a general guardian
11 for a specified period not to exceed six months, provided that
12 he or she may not serve as temporary guardian for a period
13 beyond 30 days without a showing of exigent circumstances. The
14 authority of any permanent guardian previously appointed by
15 the court is suspended as long as a temporary guardian has
16 authority.

17 "(c) The court may remove a temporary guardian at
18 any time. A temporary guardian shall make any report and
19 comply with any conditions the court imposes or requires. In
20 other respects the provisions of this chapter concerning
21 guardians apply to temporary guardians.

22 "(d) There shall be no automatic renewal of an order
23 appointing a temporary guardian made pursuant to this section.

24 "§26-2A-133.

25 "(a) The person to be protected or any person who is
26 interested in the estate, affairs, or welfare of the person,
27 including a parent, child, guardian, custodian, or any person

1 who would be adversely affected by lack of effective
2 management of the person's property and business affairs may
3 file a verified petition for the appointment of a conservator
4 or for other appropriate protective order.

5 "(b) The petition must set forth to the extent known
6 the interest of the petitioner; the name, age, residence, and
7 address of the person to be protected; the names and addresses
8 of all persons, known to the petitioner, who must be given
9 notice, a general statement of the person's property with an
10 estimate of the value thereof, including any compensation,
11 insurance, pension, or allowance to which the person is
12 entitled; the reason why appointment of a conservator or other
13 protective order is necessary, and whether bond has been
14 relieved. If the appointment of a conservator is requested,
15 the petition must also set forth the name and address of the
16 person whose appointment is sought and the basis of the claim
17 to priority for appointment.

18 "§26-2A-147.

19 "Each conservator shall account to the court for
20 administration of the conservatorship upon resignation or
21 removal and at other times as the court may direct, but if not
22 otherwise directed, the conservator must, at least once in
23 three years, account to the court and make a report at least
24 once a year beginning from the date of his or her appointment
25 as conservator. If the conservator shall die before making the
26 accounting, the conservator's personal representative will
27 make the accounting, or if no personal representative has been

1 appointed, the sureties on the conservator's bond may proceed
2 to make the accounting. On termination or removal of the
3 protected person's minority or disability, a conservator shall
4 account to the court or to the formerly protected person. An
5 order after notice and hearing allowing an intermediate
6 account of a conservator is a final adjudication as to
7 liabilities concerning the matters considered in connection
8 therewith. Thereafter, at any time prior to final settlement,
9 the account may be reopened by the court on motion or petition
10 of the conservator or ward or other party having an interest
11 in the estate for amendment or revision if it later appears
12 that the account is incorrect either because of fraud or
13 mistake. An order, following notice and hearing, allowing a
14 final account is a final adjudication as to all previously
15 unsettled liabilities of the conservator to the protected
16 person or the protected person's successors relating to the
17 conservatorship. In connection with any account, the court may
18 require a conservator to submit to a physical examination of
19 the estate, to be made in any manner the court specifies.

20 "§26-2A-152.

21 "(a) Subject to limitation provided in Section
22 26-2A-154, a conservator shall have all of the powers
23 conferred in this section and any additional powers now or
24 hereafter conferred by law on trustees in this state. In
25 addition, a conservator of the estate of an unmarried minor as
26 to whom no one has parental rights, has the powers of a
27 guardian of a minor described in Section 26-2A-78 until the

1 minor attains the age of 19 years, or the disabilities of
2 nonage have been removed, but the parental rights so conferred
3 on a conservator do not preclude appointment of a guardian as
4 provided in Division 1 of this article.

5 "(b) A conservator without court authorization or
6 confirmation may invest and reinvest funds of the estate as
7 would a trustee.

8 "(c) A conservator, acting as a fiduciary in efforts
9 to accomplish the purpose of the appointment, may act without
10 court authorization or confirmation, to do any of the
11 following:

12 "(1) Collect, hold, and retain assets of the estate,
13 including land in another state and stocks of private
14 corporations, until determining that disposition of the assets
15 should be made, and the assets may be retained even though
16 they include an asset in which the conservator is personally
17 interested_{7.}

18 "(2) Receive additions to the estate_{7.}

19 "(3) Acquire an undivided interest in an asset of
20 the estate that is otherwise an investment authorized for the
21 conservator and in which the conservator, in any fiduciary
22 capacity, holds an undivided interest_{7.}

23 "(4) Invest and reinvest estate assets in accordance
24 with subsection (b)_{7.}

25 "(5) Deposit estate funds to the extent insured in a
26 state or federally insured financial institution, including
27 one operated by the conservator_{7.}

1 "(6) Acquire an asset for the estate that is an
2 authorized investment for conservators, including land in
3 another state, for cash or on credit, at public or private
4 sale, and manage, develop, improve, partition, or change the
5 character of an estate asset7.

6 "(7) Dispose of an asset, other than real property,
7 of the estate for cash or on credit, at public or private
8 sale, and manage or change the character of an estate asset7.

9 "(8) Make ordinary or extraordinary repairs or
10 alterations in buildings or other structures7.

11 "(9) Enter for any purpose into a lease as lessor or
12 lessee for a term not exceeding five years7.

13 "(10) Enter into a lease or arrangement for
14 exploration and removal of minerals or other natural resources
15 or enter into a pooling or unitization agreement7.

16 "(11) Grant an option for a period not exceeding one
17 year involving disposition of an estate asset7.

18 "(12) Vote a security, in person or by general or
19 limited proxy7.

20 "(13) Pay calls, assessments, and any other sums
21 chargeable or accruing against or on account of securities7.

22 "(14) Sell or exercise stock-subscription or
23 conversion rights7.

24 "(15) Deposit any stocks, bonds, or other securities
25 at any time held in any pool or voting trust containing terms
26 or provisions approved by the conservator7.

1 "(16) Consent, directly or through a committee or
2 other agent, to the reorganization, consolidation, merger,
3 dissolution, or liquidation of a corporation or other business
4 enterprise7.

5 "(17) Insure the assets of the estate against damage
6 or loss and the conservator against liability with respect to
7 third persons7.

8 "(18) Borrow money for the protection of the estate
9 to be repaid from estate assets or otherwise; advance money
10 for the protection of the estate or the protected person and
11 for all expenses, losses, and liability sustained in the
12 administration of the estate or because of the holding or
13 ownership of any estate assets, for which the conservator has
14 a lien on the estate as against the protected person for
15 advances so made7.

16 "(19) Pay or contest any claim; settle a claim by or
17 against the estate or the protected person by compromise,
18 arbitration, or otherwise; and release, in whole or in part,
19 any claim belonging to the estate to the extent the claim is
20 uncollectible7.

21 "(20) Pay reasonable annual compensation of the
22 conservator, subject to final approval of the court in an
23 accounting under Section 26-2A-1477.

24 "(21) Pay taxes, assessments, and other expenses
25 incurred in the collection, care, administration, and
26 protection of the estate7.

1 "(22) Allocate items of income or expense to either
2 estate income or principal, as provided by the applicable
3 principal and income act or other law, including creation of
4 reserves out of income for depreciation, obsolescence, or
5 amortization, or for depletion in mineral or timber
6 properties;.

7 "(23) Pay any sum distributable to a protected
8 person or dependent of the protected person by - (i) paying
9 the sum to the distributee, (ii) applying the sum for the
10 benefit of the distributee, or (iii) paying the sum for the
11 use of the distributee to the guardian of the distributee, or,
12 if none, to a relative or other person having custody of the
13 distributee;.

14 "(24) Employ persons, including attorneys, auditors,
15 investment advisors, or agents, even though they are
16 associated with the conservator, to advise or assist in the
17 performance of administrative duties;.

18 "(25) Prosecute or defend actions, claims, or
19 proceedings in any jurisdiction for the protection of estate
20 assets and of the conservator in the performance of fiduciary
21 duties;.

22 "(26) Execute and deliver all instruments that will
23 accomplish or facilitate the exercise of the powers vested in
24 the conservator~~;~~and.

25 "(27) Hold a security in the name of a nominee or in
26 other form without disclosure of the conservatorship so that
27 title to the security may pass by delivery, but the

1 conservator is liable for any act of the nominee in connection
2 with the stock so held.

3 "(d) A conservator, acting as a fiduciary in efforts
4 to accomplish the purpose of the appointment, may act with
5 prior court authorization, to do any of the following:

6 "(1) Continue or participate in the operation of any
7 business or other enterprise~~;~~.

8 "(2) Demolish any improvements and raze or erect new
9 party walls or buildings~~;~~.

10 "(3) Dispose of any real property, including land in
11 another state, for cash or on credit, at public or private
12 sale, and manage, develop, improve, partition, or change the
13 character of estate real property~~;~~.

14 "(4) Subdivide, develop, or dedicate land or
15 easements to public use; make or obtain the vacation of plats
16 and adjust boundaries~~;~~.

17 "(5) Enter for any purpose into a lease as lessor or
18 lessee for a term of five or more years or extending beyond
19 the term of the conservatorship~~;~~.

20 "(6) Grant an option for a term of more than one
21 year involving disposition of an estate asset~~;~~~~and.~~

22 "(7) Take an option for the acquisition of any
23 asset.

24 "(e) The conservator shall not have authority to
25 dismiss an attorney who was retained by an incapacitated
26 person to challenge the initial order of appointment of
27 conservator, nor refuse to allow the attorney to meet with the

1 incapacitated person or participate in proceedings related to
2 the conservatorship without notice, hearing, and court order.

3 "(f) Other than within the course of proceedings,
4 and except as specifically directed by the court, a
5 conservator shall not share medical records and reports,
6 wills, investment reports, deeds, or other confidential
7 information with any person who filed the petition for
8 conservatorship or with any attorney representing a
9 petitioner. This subsection shall not apply when the
10 petitioning party is the Department of Human Resources or one
11 of its agents.

12 "§26-5-2.

13 "If not otherwise directed, the conservator must, at
14 least once in three years, file in the court of probate an
15 account of his or her guardianship, accompanied with the
16 vouchers showing his or her receipts and disbursements, which
17 must be verified by affidavit. Upon the filing of ~~such~~ the
18 account and vouchers the court must appoint a guardian ad
19 litem to represent the ward in any circumstance where the ward
20 is not represented by counsel independently retained by the
21 ward."

22 Section 2. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.