

**House Judiciary Reported Substitute for HB249**

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5 A BILL

6 TO BE ENTITLED

7 AN ACT

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9 Relating to guardianships and conservatorships; to  
10 amend Sections 26-2-2, 26-2-3, 26-2A-20 26-2A-50, 26-2A-52,  
11 26-2A-103, 26-2A-134, and 26-2A-136, Code of Alabama 1975, and  
12 to add Sections 26-2A-54, 26-2A-107.1, and 26-2A-136.1 to the  
13 Code of Alabama 1975; to further provide procedures and  
14 requirements relating to the removal of proceedings involving  
15 guardianships or conservatorships from probate court to the  
16 circuit court; to further provide for notice requirements for  
17 petitions involving a guardianship, conservatorship, or  
18 protective proceeding; to require guardians ad litem to  
19 undergo training before appointment in a case involving a  
20 guardianship, conservatorship, or protective proceeding; to  
21 specify the duties of such a guardian ad litem; to require the  
22 court to appoint a court representative in proceedings  
23 involving a guardianship or protective order, with exceptions;  
24 to provide for the duties and responsibilities of a court  
25 representative; to provide for the appointment of temporary or  
26 emergency guardians in certain circumstances to prevent harm  
27 to an adult's physical health, safety, or welfare; to provide  
28 for the appointment of temporary or emergency conservators or

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29 other temporary or emergency relief in certain circumstances  
30 to prevent harm to an adult's property or financial interests;  
31 to allow the court to penalize attorneys or parties who  
32 improperly petition for temporary or emergency guardians or  
33 conservators; to revise the authority of a court to preserve  
34 and apply the property of a person who is the subject of an  
35 ongoing protective order proceeding; **to repeal Section**  
36 **26-2A-107, Code of Alabama 1975, relating to emergency orders**  
37 **for a temporary guardian;** and to make nonsubstantive,  
38 technical revisions to update the existing code language to  
39 current style.

40 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

41       Section 1. Sections 26-2-2, 26-2-3, 26-2A-20, 26-2A-50,  
42 26-2A-52, 26-2A-103, 26-2A-134, and 26-2A-136 are amended to  
43 read as follows:

44       "§26-2-2

45       (a) For all guardianships, conservatorships, and other  
46 protective proceedings commencing before January 1, 2027, the  
47 ~~The~~-administration or conduct of any guardianship or  
48 conservatorship of a minor or incapacitated person may be  
49 removed from the probate court to the circuit court, at any  
50 time before the final settlement thereof by the guardian or  
51 conservator of any such guardianship or conservatorship or  
52 guardian ad litem or next friend of such ward or anyone  
53 entitled to support out of the estate of such ward without  
54 assigning any special equity, and an order of removal must be  
55 made by the court or judge upon the filing of a sworn petition  
56 by any such guardian or conservator or guardian ad litem or

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57 next friend for the ward or such person entitled to support  
58 out of the estate of such ward, reciting in what capacity the  
59 petitioner acts and that in the opinion of the petitioner such  
60 guardianship or conservatorship can be better administered in  
61 the circuit court than in the probate court.

62 (b) The following shall apply to all guardianships,  
63 conservatorships, and other protective proceedings commenced  
64 on or after January 1, 2027:

65 (1)a. Except for a proceeding pending in a probate  
66 court in a county where the probate court or judge of probate  
67 exercises equity jurisdiction concurrent with that of the  
68 circuit court, a proceeding in a probate court under this  
69 chapter or Chapter 2A may be removed to the circuit court for  
70 the county where the proceeding in probate court is pending at  
71 any time before the probate court has taken steps toward a  
72 final settlement.

73 b. Removal under this subdivision may be done by any of  
74 the following parties:

75 1. The guardian, including any emergency or temporary  
76 guardian appointed by a court of competent jurisdiction and  
77 any guardian appointed in another jurisdiction for the person  
78 who is the subject of the proceeding.

79 2. The conservator, including any emergency or  
80 temporary conservator appointed by a court of competent  
81 jurisdiction and any conservator appointed in another  
82 jurisdiction for the person who is the subject of the  
83 proceeding.

84 3. The alleged incapacitated person, prior to a

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85 determination of incapacity.

86 4. The guardian ad litem or attorney for the person who  
87 is the subject of the proceeding.

88 5. An agent acting under a facially valid durable power  
89 of attorney executed prior to the commencement of any such  
90 proceeding by the person who is the subject of the proceeding.

91 6. Any facility in which the person who is the subject  
92 of the proceeding resides or has been admitted as a patient.

93 7. The next friend of the person who is the subject of  
94 the proceeding.

95 8. The Department of Human Resources.

96 9. Any person entitled to support out of the estate of  
97 the person who is the subject of the proceeding.

98 10. The spouse of the person who is the subject of the  
99 proceeding.

100 (2) To remove a proceeding from the probate court to  
101 the circuit court, the removing party shall file in the  
102 circuit court to which the proceeding is being removed a  
103 notice of removal that contains all of the following:

104 a. A description of the nature of the proceeding being  
105 removed.

106 b. Whether a jury trial is demanded under Section  
107 26-2A-35.

108 c. The removing party's interest in the proceeding  
109 being removed.

110 d. The name of all interested persons to the proceeding  
111 being removed to which the removing party is delivering the  
112 notice of removal.

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113        (3) Following the removal to the circuit court, the  
114        removing party shall file a copy of the notice of removal with  
115        the clerk of the probate court and shall send a copy of the  
116        notice of removal to all interested parties listed in the  
117        notice. Upon receiving a copy of the notice of removal, the  
118        probate court may not take further action unless and until the  
119        removed proceeding is remanded, except to deliver a copy of  
120        the record in the probate court to the clerk of the circuit  
121        court.

122        (4) The circuit court shall have jurisdiction of a  
123        removed proceeding upon filing of the notice of removal with  
124        the circuit clerk. None of the following may deprive the  
125        circuit court of jurisdiction to hear and decide the removed  
126        proceeding:

127        a. The omission of any information required to be  
128        included in the notice of removal.

129        b. An incorrect statement of any information required  
130        to be included in the notice of removal.

131        c. The failure of the probate court to deliver a copy  
132        of the record of proceedings in that court.

133        (5) If a necessary party to the proceedings does not  
134        receive notice of the proceedings as required by law before  
135        the notice of removal is filed, the removing party shall cause  
136        notice of the proceeding to be issued to the necessary party  
137        as provided in the Alabama Rules of Civil Procedure or as  
138        otherwise provided by law.

139        (6) The circuit court may remand a proceeding removed  
140        under this section to the probate court if the circuit court

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141 finds any of the following:

142 a. The removal was sought for purpose of improper  
143 delay.

144 b. The removal did not comply with applicable law.

145 c. Judgment on all contested matters pending before the  
146 circuit court is final and: (i) the time for an appeal expired  
147 without the filing of an appeal; or (ii) if an appeal was  
148 filed, there is a final adjudication of the appeal.

149 d. All interested parties or their representatives have  
150 requested the removed proceeding be remanded to probate court.

151 (7) Following remand by the circuit court, the clerk of  
152 the circuit court shall deliver a copy of the order of remand  
153 and the record of all proceedings in the circuit court to the  
154 clerk of the probate court, to be filed with the records of  
155 the proceeding in the probate court. The probate court shall  
156 proceed with the proceeding in accordance with the circuit  
157 court's order.

158 (8) In any proceeding removed from a probate court, the  
159 circuit court may issue all necessary orders and process to  
160 bring before it all proper parties, whether served by process  
161 issued by the probate court or otherwise.

162 (9) Neither remand nor anything else shall prevent the  
163 subsequent removal of a proceeding to the circuit court under  
164 this section."

165 "§26-2-3

166 (a) In any county where the judge of probate is  
167 required to be learned in the law, the administration or  
168 conduct of any guardianship or conservatorship of a minor or

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169      incapacitated person may be removed from the probate court to  
170      the circuit court pursuant to Section 26-2-2 at any time  
171      before a proceeding for final settlement—~~thereof~~ is commenced  
172      in probate court by the guardian or conservator of the  
173      guardianship or conservatorship or guardian ad litem or next  
174      friend of a ward or anyone entitled to support out of the  
175      estate of the ward without assigning any special equity. The  
176      circuit court shall remand the administration of a  
177      guardianship or conservatorship transferred pursuant to this  
178      section to the probate court if the circuit court finds that  
179      the removal was sought for the purpose of improper delay or  
180      did not comply with applicable law. The circuit court may  
181      remand the administration of a guardianship or conservatorship  
182      pursuant to this section to the probate court if the circuit  
183      court finds that any of the following apply:

184                (1) The circuit court has issued a final order or  
185      judgment on all contested matters pending before the circuit  
186      court in the administration of the guardianship or  
187      conservatorship and the time for an appeal of the order or  
188      judgment has expired without an appeal being filed or, if an  
189      appeal was filed, after the final adjudication of the appeal.

190                (2) All interested parties or their representatives  
191      request the administration of the guardianship or  
192      conservatorship be remanded to probate court.

193                (b) Nothing in subsection (a) shall prevent the  
194      administration of a guardianship or conservatorship from being  
195      removed again to the circuit court pursuant to Section 26-2-2  
196      after the administration has been remanded to the probate

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197 court as provided above.

198 (c) This section shall not apply to any guardianship,  
199 conservatorship, or other protective proceeding commenced on  
200 or after January 1, 2027."

201 "§26-2A-20

202 For the purposes of ~~As used in~~ this chapter, the  
203 following terms ~~shall~~ have the following meanings~~,~~  
204 ~~respectively, unless the context clearly indicates otherwise:~~

205 (1) CLAIMS. ~~In respect of~~ With respect to a protected  
206 person, ~~includes the~~ the liabilities of the protected person,  
207 whether arising in contract, tort, or otherwise, and  
208 liabilities of the estate which arise at or after the  
209 appointment of a conservator, including expenses of  
210 administration.

211 (2) CONSERVATOR. A person who is appointed by a court  
212 to manage the estate of a protected person~~and~~. The term  
213 includes a limited conservator described in Section  
214 26-2A-148(a).

215 (3) COURT. A probate court of this state.

216 (4) COURT REPRESENTATIVE. A person appointed in a  
217 guardianship or protective proceeding who: (i) is trained in  
218 law, nursing, or social work~~;~~ (ii) is an officer, employee,  
219 or special appointee of the court~~;~~ (iii) and has no personal  
220 interest in the proceeding.

221 (5) DISABILITY. Cause for a protective order as  
222 described in Section 26-2A-130.

223 (6) ESTATE. ~~Includes the~~ The property of the person  
224 whose affairs are subject to this chapter.



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225 (7) GUARDIAN. A person who has qualified as a guardian  
226 of a minor or incapacitated person pursuant to parental or  
227 spousal nomination or court appointment ~~and~~. The term includes  
228 a limited guardian as described in Sections 26-2A-78(e) and  
229 26-2A-105(c), but excludes ~~one~~ a person who is merely a  
230 guardian ad litem.

231 (8) INCAPACITATED PERSON. Any person who is impaired by  
232 reason of mental illness, mental deficiency, physical illness  
233 or disability, physical or mental infirmities accompanying  
234 advanced age, chronic use of drugs, chronic intoxication, or  
235 other cause—, except minority—~~to the extent of lacking~~  
236 sufficient understanding or capacity to make or communicate  
237 responsible decisions.

238 (9) LEASE. Includes an oil, gas, or other mineral  
239 lease.

240 (10) LETTERS.—Includes letters Letters of guardianships  
241 and letters of conservatorship.

242 (11) MINOR. A person who is under 19 years of age and  
243 has not otherwise had the disabilities of minority removed.

246                   (13) (12) MORTGAGE. Any conveyance, agreement, or  
247 arrangement in which property is used as collateral.

248                   (14) (13) ORGANIZATION. Includes a A corporation,  
249 business trust, estate, trust, partnership, association, two  
250 or more persons having a joint or common interest, government,  
251 governmental subdivision or agency, or any other legal entity.

252 (15) ~~(14)~~ PARENT. Includes any Any person entitled to



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253 take, or who would be entitled to take if the child died  
 254 without a will, as a parent by intestate succession from the  
 255 child whose relationship is in question ~~and~~. The term excludes  
 256 any person who is only a stepparent, foster parent, or  
 257 grandparent.

258 (16) ~~(15)~~ PERSON. An individual or an organization,  
 259 unless the context otherwise requires.

260 (17) ~~(16)~~ PETITION. A written request to the court for  
 261 an order after notice.

262 (18) ~~(17)~~ PROCEEDING. ~~Includes action~~ Action at law and  
 263 suit in equity.

264 (19) ~~(18)~~ PROPERTY. ~~Includes both~~ Both real and personal  
 265 property , or any interest therein , and ~~means~~ anything that may  
 266 be the subject of ownership.

267 (20) ~~(19)~~ PROTECTED PERSON. A minor or other person for  
 268 whom a conservator has been appointed or other protective  
 269 order has been made as provided in Sections 26-2A-136 and  
 270 26-2A-137.

271 (21) ~~(20)~~ PROTECTIVE PROCEEDING. A proceeding under ~~the~~  
 272 ~~provisions of~~ Division 3 of Article 2, ~~Division 3~~.

273 (22) RESPONDENT. An individual for whom: (i) a petition  
 274 requests the court to enter a protective order to appoint a  
 275 guardian or conservator; (ii) a protective arrangement is  
 276 sought; or (iii) any emergency or temporary guardian,  
 277 conservator, or other relief is requested.

278 (23) ~~(21)~~ SECURITY. ~~Includes any~~ Any note~~s~~; stock~~s~~;  
 279 treasury stock~~s~~; bond, debenture~~s~~; evidence of indebtedness~~s~~;  
 280 certificate of interest or participation in an oil, gas, or

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281 mining title or lease or in payments out of production under  
282 such a title or lease~~or~~ collateral trust certificate,  
283 transferable share~~or~~; voting trust certificate or, in general,  
284 any interest or instrument commonly known as a security, or  
285 any certificate of interest or participation~~or~~; any temporary  
286 or interim certificate, receipt or certificate of deposit for,  
287 or any warrant or right to subscribe to or purchase any of the  
288 foregoing.

289 (24)~~(22)~~ WARD. A person for whom a guardian has been  
290 appointed.~~A "minor ward" is a minor for whom a guardian has~~  
291 ~~been appointed solely because of minority."~~

292 "§26-2A-50

293 (a) If notice of a hearing on any petition is required,  
294 other than a notice meeting specific notice requirements  
295 otherwise provided under Sections 26-2A-103, 26-2A-107.1,  
296 26-2A-134, and 26-2A-136.1, the petitioner shall cause notice  
297 of the time and place of the hearing of any petition to be  
298 given to the person to be notified or to the attorney if the  
299 person has appeared by attorney or requested that notice be  
300 sent to an attorney.

301 (b) Notice~~must~~ shall be given by service in the manner  
302 provided for service of summons in the Alabama Rules of Civil  
303 Procedure, except as follows:

304 (1) If by certified mail or commercial carrier, By  
305 ~~mailing a copy of~~ the notice shall be sent at least 14 days  
306 before the time set for the hearing~~by certified, registered,~~  
307 ~~or ordinary first-class mail and~~ addressed to the person being  
308 notified using the post office address given in the request



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309 for notice, if any, or to the person's office or place of  
 310 residence, if known.<sup>+</sup>

311 (2) If by process server, by ~~By~~ delivering ~~a~~ ~~copy~~  
 312 ~~thereof~~ the notice to the person being notified ~~personally~~ at  
 313 least ~~14~~ 10 days before the time set for the hearing; ~~or~~.

314 (3) If by publication when the address or identity of  
 315 any person is not known and cannot be ascertained with  
 316 reasonable diligence, by publishing a copy of the notice at  
 317 least once a week for three consecutive weeks, ~~a copy of the~~  
 318 ~~notice~~ in a newspaper having general circulation in the county  
 319 in which the hearing is to be held, the last publication of  
 320 which ~~is to~~ shall be at least 10 days before the time set for  
 321 the hearing.

322 (c) The court for good cause shown may provide for a  
 323 different method or time of giving notice for any hearing.

324 (d) Proof of the giving of notice must be made not  
 325 later than the hearing and filed in the proceeding."

326 "§26-2A-52

327 (a) At any point in a proceeding, a court may appoint a  
 328 guardian ad litem to represent the interest of a ~~minor or~~  
 329 ~~other person~~ respondent if the court determines that  
 330 representation of the interest otherwise would be inadequate.  
 331 If not precluded by conflict of interests, a guardian ad litem  
 332 may be appointed to represent several persons or interests.

333 (b) The primary responsibility of a guardian ad litem  
 334 is to protect the best interests of the respondent. The duties  
 335 of a guardian ad litem include the following:

336 (1) a. Meet with the respondent prior to court hearings

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337 and when apprised of emergencies or significant events  
338 impacting the respondent.

339 b. Explain, in terms understandable to the respondent,  
340 what is expected to happen before, during, and after each  
341 court hearing.

342 (2) Conduct a thorough and independent investigation.

343 Unless otherwise directed by the court, the investigation  
344 shall include the following:

345 a. Obtaining and reviewing relevant documents.

346 b. Interviewing the person who appears to have caused  
347 the petition to be filed and any other person who is nominated  
348 to serve as guardian or conservator.

349 c. Interviewing the respondent, if practicable.

350 d. Prior to a final hearing on the appointment of a  
351 guardian or conservator, and at other times as necessary,  
352 visiting the present dwelling of the respondent.

353 e. Making reasonable efforts to ascertain the  
354 respondent's wishes.

355 f. Identifying less-restrictive alternatives to  
356 guardianship or conservatorship.

357 (3) Unless represented by counsel, inform an alleged  
358 incapacitated adult respondent of the respondent's right to be  
359 present at the hearing, to be represented by counsel, to  
360 prevent evidence and cross-examine witnesses, and to demand a  
361 trial by jury.

362 (4) Advocate for appropriate services for the  
363 respondent.

364 (5) Advocate for the result that is the least



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365 restrictive in type, duration, and scope and consistent with  
 366 an alleged incapacitated adult respondent's best interests.

367 (6) Submit a report and recommendation in writing to  
 368 the court. In making the report, the guardian ad litem shall  
 369 be an advocate for the best interests of the respondent. The  
 370 guardian ad litem should consider, but is not bound by, the  
 371 wishes of the respondent.

372 (7) Attend all court hearings and file all necessary  
 373 pleadings to facilitate the best interests of the respondent.

374 (8) Avoid conflicts of interest, impropriety, and  
 375 self-dealing.

376 (c) The court may include additional duties or  
 377 instructions for the guardian ad litem in its order of  
 378 appointment.

379 (d) Unless otherwise provided by court order, a  
 380 guardian ad litem's duties in a proceeding terminate: (i) when  
 381 the court has issued a final order or judgment and the time  
 382 for an appeal of the order or judgment has expired without an  
 383 appeal being filed; or (ii) if an appeal was filed, after the  
 384 final adjudication of the appeal.

385 (e) Before being appointed by the court, every guardian  
 386 ad litem appointed under this chapter shall successfully  
 387 complete a training program prepared or approved by the  
 388 Alabama Probate Judges Association and the Alabama Law  
 389 Institute."

390 "§26-2A-103

391 (a) Except as provided in Section 26-2A-107.1, in In a  
 392 proceeding for the appointment of a guardian of an



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393      incapacitated person, ~~and, if notice is required in a~~  
 394      ~~proceeding for appointment of a temporary guardian~~, notice of  
 395      hearing ~~must~~ shall be given to each of the following:

396      (1) The ~~person alleged to be incapacitated~~ respondent,  
 397      ~~her or his spouse (if any)~~ the respondent's spouse, if any,  
 398      and adult children, or if none, parents ~~+~~.

399      (2) Any person who is serving as guardian ~~+~~ or  
 400      conservator ~~+~~ or who has the care and custody of the ~~person~~  
 401      ~~alleged to be incapacitated~~; respondent.

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

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

406      (b) Notice of hearing on a petition for an order  
 407      subsequent to appointment of a guardian must be given to the  
 408      ~~ward~~ respondent, the guardian, and any other person as ordered  
 409      by the court.

410      (c) Notice must be served ~~personally~~ on the ~~alleged~~  
 411      ~~incapacitated person~~ respondent as provided in Section  
 412      26-2A-50 (b) (2). Notices to other persons as required by  
 413      subsection ~~(a) (1) must~~ (a) or (b) shall be served ~~personally~~  
 414      ~~if the person to be notified can be found within the state. In~~  
 415      ~~all other cases, required notices must be given~~ as provided in  
 416      Section 26-2A-50.

417      (d) The ~~person alleged to be incapacitated~~ respondent  
 418      may not waive notice."

419      "§26-2A-134

420      (a) On a petition for appointment of a conservator or



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421 other protective order, the requirements for notice described  
 422 in Section 26-2A-103 apply, ~~but (i) if~~ except that:

423 (1) If the ~~person to be protected~~ respondent has  
 424 disappeared or is otherwise situated so as to make personal  
 425 service of notice impracticable, notice to the ~~person must~~  
 426 respondent shall be given by publication as provided in  
 427 Section 26-2A-50, ~~and (ii) if; and~~

428 (2) If the ~~person to be protected~~ respondent is a  
 429 minor, the provisions of Section 26-2A-75 also apply.

430 (b) Notice, as described in Section 26-2A-103, of any  
 431 hearing on a petition for an order subsequent to appointment  
 432 of a conservator or other protective order must be given to  
 433 the ~~protected person~~ respondent, any conservator of the  
 434 ~~protected person's~~ respondent's estate, and any other person  
 435 as ordered by the court."

436 "§26-2A-136

437 (a) The court shall exercise the authority conferred in  
 438 this division to encourage the development of maximum  
 439 self-reliance and independence of a protected person and make  
 440 protective orders only to the extent necessitated by the  
 441 protected person's mental and adaptive limitations and other  
 442 conditions warranting the procedure.

443 (b) The court has the following powers that may be  
 444 exercised directly or through a conservator in respect to the  
 445 estate and business affairs of a protected person:

446 (1) ~~While a petition for appointment of a conservator~~  
 447 ~~or other protective order is pending and after preliminary~~  
 448 ~~hearing and without notice, the court may preserve and apply~~



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449 ~~the property of the person to be protected as may be required~~  
 450 ~~for the support of the person or dependents of the person.~~

451        ~~(2)~~ After hearing and upon determining that a basis for  
 452 an appointment or other protective order exists with respect  
 453 to a minor without other disability, the court has all those  
 454 powers over the estate and business affairs of the minor which  
 455 are or may be necessary for the best interest of the minor and  
 456 members of minor's immediate family.

457        ~~(2)~~~~(3)~~ After hearing and upon determining that a basis  
 458 for an appointment or other protective order exists with  
 459 respect to a person for reasons other than minority, the  
 460 court, for the benefit of the person and members of the  
 461 person's immediate family, has all the powers over the estate  
 462 and business affairs which the person could exercise if  
 463 present and not under disability, except the power to make a  
 464 will. Subject to subsection (c), those ~~powers~~ include, but are  
 465 not limited to, the powers to do the following:~~power to make~~

466            a. Make gifts;~~to convey.~~

467            b. Convey or release contingent and expectant interests  
 468 in property, including marital property rights and any right  
 469 of survivorship incident to joint tenancy or tenancy by the  
 470 entirety;~~to exercise.~~

471            c. Exercise or release powers held by the protected  
 472 person as trustee, personal representative, custodian for  
 473 minors, conservator, or donee of a power of appointment;~~to~~  
 474 ~~enter.~~

475            d. Enter into contracts;~~to create.~~

476            e. Create revocable or irrevocable trusts of property

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477 of the estate which may extend beyond the disability or life  
478 of the protected person;~~to exercise.~~

479 f. Exercise options of the protected person to purchase  
480 securities or other property;~~to exercise.~~

481 g. Exercise rights to elect options and change  
482 beneficiaries under insurance and annuity policies and to  
483 surrender the policies for their cash value;~~to exercise.~~

484 h. Exercise any right to an elective share in the state  
485 of the person's deceased spouse and to renounce or disclaim  
486 any interest by testate or intestate succession or by inter  
487 vivos transfer.

488 (c) The court may exercise or direct the exercise of  
489 the following powers only if, after notice and hearing, the  
490 court is satisfied, after notice and hearing, that it is in  
491 the best interest of the protected person, and that the person  
492 either is incapable of consenting or has consented to the  
493 proposed exercise of power:

494 (1) To exercise or release powers of appointments of  
495 which the protected person is done~~r.~~

496 (2) To renounce or disclaim interests~~r.~~

497 (3) To make gifts in trust or otherwise exceeding in  
498 the aggregate 20 percent of the year's income of the estate~~r~~  
499 and.

500 (4) To change beneficiaries under insurance and annuity  
501 policies.

502 (d) Except for the disability necessitating the  
503 appointment, a determination that a basis for appointment of a  
504 conservator or other protective order exists has no effect

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505 otherwise on the capacity of the protected person. A  
506 conservator has all the powers granted by this section, unless  
507 specifically limited by the court. A protected person does not  
508 have or possess powers granted to the conservator."

509 Section 2. Sections 26-2A-54, 26-2A-107.1, and  
510 26-2A-136.1 are added to the Code of Alabama 1975, to read as  
511 follows:

512 \$26-2A-54

513 (a) In any proceeding under this article, the court  
514 shall appoint a court representative unless the court  
515 determines that the appointment is not likely to aid the court  
516 or would add unnecessary expense to the proceeding. At any  
517 time after the order is entered, the court may appoint a court  
518 representative if the court determines that the appointment  
519 would aid the court.

520 (b) Each court representative shall have training or  
521 experience in the type of abilities, limitations, and needs  
522 alleged in the petition, and have no personal interest in the  
523 proceedings. An appointed court representative shall be an  
524 officer, employee, or special appointee of the court.

525 (c) A court representative appointed under subsection  
526 (a) shall do all of the following, unless otherwise directed  
527 or limited by the court:

528 (1) Independently evaluate the petition and the  
529 allegations made in the petition.

530 (2) Interview the respondent in person and do both of  
531 the following in a manner that the respondent is best able to  
532 understand:

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533           a. Explain to the respondent the substance of the  
534 petition and the nature, purpose, and effect of the  
535 proceeding.

536           b. Determine the respondent's views about the relief  
537 sought by the petitioner.

538           (3) Interview the petitioner and proposed guardian or  
539 conservator, if any.

540           (4) If relevant to the proceedings, visit the  
541 respondent's present dwelling and any dwelling in which the  
542 court representative reasonably believes the respondent will  
543 live if the relief sought is granted.

544           (5) Obtain information from any physician or other  
545 person known to have treated, advised, or assessed the  
546 respondent's relevant physical or mental condition.

547           (6) File a report of the court representative's  
548 findings in a record with the court, unless waived by the  
549 court for good cause shown.

550           (d) The court may use the service of any public or  
551 charitable agency as an additional court representative to  
552 evaluate the condition of the respondent and to make  
553 appropriate recommendations to the court.

554           §26-2A-107.1

555           (a) Either at the court's discretion after a petition  
556 has been filed under this division or on petition by a person  
557 interested in the adult's welfare, the court may appoint a  
558 temporary guardian or emergency guardian for an adult if the  
559 court finds all of the following:

560           (1) The appointment of a temporary guardian or

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561 emergency guardian is likely to prevent substantial harm to  
562 the adult's physical health, safety, or welfare.

563 (2) No other person appears to have the authority and  
564 the willingness to act in the circumstances.

565 (3) There is reason to believe that a basis for  
566 appointment of a guardian under Section 26-2A-102 exists.

567 (b) (1) Immediately upon the filing of a petition for  
568 appointment of a temporary guardian or emergency guardian of  
569 an adult and if a guardian ad litem has not been appointed to  
570 represent the respondent, the court shall appoint a guardian  
571 ad litem to represent the respondent in the proceeding.

572 (2) Except as otherwise provided in subsection (d), the  
573 court shall provide notice of the date, time, and place of a  
574 hearing on a petition for appointment of a temporary guardian  
575 or emergency guardian of an adult no later than five days  
576 before the time set for the hearing to all of the following  
577 parties:

578 a. The respondent.

579 b. The respondent's guardian ad litem and attorney.

580 c. Any other person that the court determines is an  
581 appropriate party to the hearing.

582 (c) (1) The duration of authority of a temporary  
583 guardian for an adult may not exceed 60 days. A temporary  
584 guardian may exercise only the powers specified in the order  
585 of appointment.

586 (2) Prior to the expiration of the duration of  
587 authority granted to a temporary guardian for an adult under  
588 subdivision (1), the duration of authority of a temporary

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589 guardian for an adult may be extended for a second term of not  
590 more than 60 days without a hearing, provided that the court  
591 finds both of the following:

592 a. The conditions for appointment of a temporary  
593 guardian in subsection (a) continue.

594 b. It is in the best interest of the respondent to  
595 continue the appointment.

596 (3) Prior to the expiration of the second or any  
597 subsequent term of the duration of authority granted to a  
598 temporary guardian under subdivision (2), the authority of a  
599 temporary guardian for an adult may be extended for a third or  
600 subsequent term of not more than 60 days upon hearing and upon  
601 the court finding that there is good cause to extend the  
602 temporary appointment. Notice of the date, time, and place of  
603 the hearing to extend the temporary appointment shall be given  
604 in accordance with the requirements of subsection (b).

605 (d) (1) The court may appoint an emergency guardian for  
606 an adult without providing notice to the adult, the adult's  
607 guardian ad litem, or any attorney for the adult only if the  
608 court finds from an affidavit or testimony that the adult's  
609 physical health, safety, or welfare will be substantially  
610 harmed before a hearing with notice on the appointment can be  
611 held.

612 (2) The duration of authority of an emergency guardian  
613 for an adult may not exceed 10 days. The emergency guardian  
614 may exercise only the powers specified in the order of  
615 appointment.

616 (3) If the court appoints an emergency guardian without

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617 giving notice under subsection (b), the court must do each of  
618 the following:

619 a. Give notice of the appointment of the emergency  
620 guardian no later than 48 hours after the appointment to:

621 1. The respondent;

622 2. The respondent's guardian ad litem and attorney, if  
623 any; and

624 3. Any other person that the court determines is an  
625 appropriate party to the hearing.

626 b. Hold a hearing on the appropriateness of the  
627 emergency appointment no later than 10 days after the  
628 appointment, with notice of the date, time, and place of the  
629 hearing given at least five days before the time set for the  
630 hearing to those persons listed in paragraph a.

631 (4) At the conclusion of the hearing on the emergency  
632 appointment, the court may do any of the following:

633 a. Appoint a temporary guardian for the adult.

634 b. Terminate the emergency guardianship without  
635 appointment of a temporary guardian.

636 c. Grant such other relief as may be proper.

637 (e) The appointment of a temporary guardian or  
638 emergency guardian under this section is not a determination  
639 that a basis exists for appointment of a guardian under  
640 Section 26-2A-102.

641 (f) The court may remove a temporary guardian or  
642 emergency guardian appointed under this section at any time.

643 (g) The court may order a temporary guardian or  
644 emergency guardian to file a written report, the contents of

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645 which may be determined by the court. A temporary guardian or  
646 emergency guardian shall make any report the court requires.

647 (h) **No county sheriff shall be appointed as a temporary**  
648 **guardian or emergency guardian pursuant to this section unless**  
649 **the county sheriff consents and accepts the appointment as**  
650 **temporary guardian or emergency guardian.**

651 §26-2A-136.1

652 (a) Either at the court's discretion after a petition  
653 has been filed under this division or on petition under this  
654 division by a person interested in the adult's welfare, the  
655 court may appoint a temporary conservator or emergency  
656 conservator for the person or grant such other temporary or  
657 emergency relief as may be appropriate, including an order to  
658 preserve and apply property of the person as required for  
659 support of the person or any person who is in fact dependent  
660 on the person, if the court finds all of the following:

661 (1) The appointment of a temporary conservator or  
662 emergency conservator or granting of other temporary or  
663 emergency relief is likely to prevent substantial and  
664 irreparable harm to the person's property or financial  
665 interests.

666 (2) No other person appears to have the authority and  
667 the willingness to act in the circumstances.

668 (3) There is reason to believe that a basis for  
669 appointment of a conservator or other protective order under  
670 Section 26-2A-130 exists.

671 (b) (1) Immediately upon the filing of a petition for  
672 appointment of a temporary conservator or emergency

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673 conservator or other temporary or emergency relief and if a  
674 guardian ad litem has not been appointed to represent the  
675 respondent, the court shall appoint a guardian ad litem to  
676 represent the respondent in the proceeding.

677 (2) Except as otherwise provided in subsection (d), the  
678 court shall provide notice of the date, time, and place of a  
679 hearing on a petition under this section at least five days  
680 before the time set for the hearing to all of the following  
681 parties:

682 a. The respondent.

683 b. The respondent's guardian ad litem and attorney, if  
684 any.

685 c. Any other person that the court determines is an  
686 appropriate party to the hearing.

687 (c) The duration of authority of a temporary  
688 conservator and the duration of any other temporary relief  
689 ordered under this section may not exceed 60 days. The  
690 temporary conservator may exercise only the powers specified  
691 in the order of appointment.

692 (2) Prior to the expiration of the duration of  
693 authority granted to a temporary conservator or the expiration  
694 of the duration of any other temporary relief under  
695 subdivision (1), the duration of authority of a temporary  
696 conservator or the duration of any other temporary relief may  
697 be extended for a second term of not more than 60 days without  
698 a hearing, provided that the court finds both of the  
699 following:

700 a. The conditions for appointment of a temporary

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701 conservator or for the granting of any other temporary relief  
702 under subsection (a) continue.

703 b. It is in the interest of the respondent to continue  
704 the appointment of a temporary conservator or granting of  
705 temporary relief.

706 (3) Prior to the expiration of the second or any  
707 subsequent term of the duration of authority granted to a  
708 temporary conservator or the duration of any other temporary  
709 relief under subdivision (2), the authority of a temporary  
710 conservator or any other temporary relief may be extended for  
711 a third or subsequent term of not more than 60 days upon  
712 hearing and upon the court finding that there is good cause to  
713 extend the temporary appointment or granting of temporary  
714 relief. Notice of the date, time, and place of the hearing to  
715 extend the temporary appointment or other temporary relief  
716 shall be given in accordance with the requirements established  
717 in subsection (b).

718 (d) (1) The court may appoint an emergency conservator  
719 or grant other emergency relief without providing notice to  
720 the respondent, the respondent's guardian ad litem, or any  
721 attorney for the respondent only if the court finds from an  
722 affidavit or testimony that the respondent's property or  
723 financial interests will be substantially and irreparably  
724 harmed before a hearing with notice on the appointment can be  
725 held.

726 (2) The duration of authority of an emergency  
727 conservator may not exceed 10 days. The emergency conservator  
728 may exercise only the powers specified in the order of

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729 appointment. The duration of any other emergency relief may  
730 not exceed 10 days.

731 (3) If the court appoints an emergency conservator or  
732 grants other emergency relief without giving notice under  
733 subsection (b), the court must do each of the following:

734 a. Give notice of the appointment of the emergency  
735 conservator or the granting of emergency relief not later than  
736 48 hours after the appointment to:

737 1. The respondent;  
738 2. The respondent's guardian ad litem and attorney, if  
739 any; and

740 3. Any other person that the court determines is an  
741 appropriate party to the hearing.

742 b. Hold a hearing on the appropriateness of the  
743 emergency appointment or granting of emergency relief not  
744 later than 10 days after the appointment is made or the  
745 emergency relief is granted, with notice of the date, time,  
746 and place of the hearing given at least five days before the  
747 time set for the hearing to those persons listed in paragraph  
748 a.

749 (4) At the conclusion of the hearing on the emergency  
750 appointment or granting of emergency relief, the court may do  
751 any of the following:

752 a. Appoint a temporary conservator for the adult.  
753 b. Terminate the emergency conservatorship or other  
754 emergency relief without further appointment or relief.  
755 c. Grant such other relief as may be proper.

756 (e) The appointment of a temporary conservator or

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757 emergency conservator under this section is not a  
758 determination that a basis exists for appointment of a  
759 conservator or other protective order under Section 26-2A-130.

760 (f) The court may remove a temporary conservator or  
761 emergency conservator appointed under this section at any  
762 time.

763 (g) The court may order a temporary conservator or  
764 emergency conservator to file a written report, the contents  
765 of which may be determined by the court. A temporary  
766 conservator or emergency conservator shall make any report the  
767 court requires.

768 (h) No county sheriff shall be appointed as a temporary  
769 conservator or emergency conservator pursuant to this section  
770 unless the county sheriff consents and accepts the appointment  
771 as temporary conservator or emergency conservator.

772 (i) The requirements of Section 26-2A-139 shall apply  
773 to any individual appointed as a temporary conservator or  
774 emergency conservator under this section.

775 (j) This section shall apply to all conservatorships  
776 and other protective proceedings commenced on or after January  
777 1, 2027.

778 Section 3. Section 26-2A-107, Code of Alabama 1975,  
779 relating to the emergency appointment of temporary guardians,  
780 is repealed.

781 Section 4. This act shall become effective on January  
782 1, 2027.