

HB249 INTRODUCED



1 HB249
2 JPKGJNN-1
3 By Representative Faulkner
4 RFD: Judiciary
5 First Read: 15-Jan-26



4 SYNOPSIS:

5 Under existing law, a proceeding involving a
6 guardianship or conservatorship of a minor or
7 incapacitated person may be removed from the probate
8 court to the circuit court at any time.

9 This bill would provide additional procedures
10 and requirements for removals of guardianships,
11 conservatorships, and protective proceedings, such as
12 specifying which parties may petition for removal;
13 setting requirements for what must be included in a
14 notice of removal; requiring notice of to be issued to
15 certain parties; and requiring a proceeding to be
16 remanded in certain circumstances.

17 Existing law sets notice requirements for
18 petitions involving a guardianship, conservatorship, or
19 protective proceeding.

20 This bill would require notice of a hearing on
21 any such petition to be served as provided in the
22 Alabama Rules of Civil Procedure, provided that the
23 notice must be provided at least 14 days before the
24 hearing if sent by certified mail or commercial carrier
25 and 10 days before the hearing if by process server.

26 This bill would further provide for the duties
27 of a guardian ad litem of a minor or other person who
28 is the subject of a petition for a guardianship,



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conservatorship, or protective proceeding and would require each guardian ad litem to successfully complete a training program prepared or approved by the Alabama Probate Judges Association and the Alabama Law Institute prior to his or her appointment.

This bill would require the court to appoint a court representative in any proceeding for a guardianship or protective order to investigate the allegations in the petition, interview the respondent, and provide a report to the court, unless the court determines a court representative is not likely to aid the court or would add unnecessary expense to the proceeding.

This bill would allow the court to appoint a temporary guardian or emergency guardian in certain circumstances in which the appointment is likely to prevent substantial harm to an adult's physical health, safety, or welfare.

This bill would allow the court to appoint a temporary conservator, emergency conservator, or grant other temporary or emergency relief in certain circumstances in which the appointment or grant is likely to prevent substantial harm to an adult's property or financial interests.

This bill would provide for the scope and duration of authority of a temporary guardian, emergency guardian, temporary conservator, and emergency conservator; would require the court to



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57 provide notice of the appointment to certain parties;
58 would allow for the appointment of an emergency
59 guardian or emergency conservator without notice in
60 certain circumstances; and would set a time frame for a
61 hearing on the appropriateness of an appointment.

62 This bill would allow the court to tax an
63 attorney or party who improperly or vexatiously
64 petitions for the appointment of a temporary guardian,
65 emergency guardian, temporary conservator, emergency
66 conservator, or other temporary or emergency relief.

67 This bill would remove a provision allowing the
68 court to preserve and apply the property of a person
69 who is the subject of an ongoing protective order
70 petition while the petition is pending.

71 This bill would also delete duplicative language
72 and would also make nonsubstantive, technical revisions
73 to update the existing code language to current style.
74

75
76 A BILL

77 TO BE ENTITLED

78 AN ACT
79

80 Relating to guardianships and conservatorships; to
81 amend Sections 26-2-2, 26-2-3, 26-2A-20 26-2A-50, 26-2A-52,
82 26-2A-103, 26-2A-134, and 26-2A-136, Code of Alabama 1975, and
83 to add Sections 26-2A-54, 26-2A-107.1, and 26-2A-136.1 to the
84 Code of Alabama 1975; to further provide procedures and



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requirements relating to the removal of proceedings involving guardianships or conservatorships from probate court to the circuit court; to further provide for notice requirements for petitions involving a guardianship, conservatorship, or protective proceeding; to require guardians ad litem to undergo training before appointment in a case involving a guardianship, conservatorship, or protective proceeding; to specify the duties of such a guardian ad litem; to require the court to appoint a court representative in proceedings involving a guardianship or protective order, with exceptions; to provide for the duties and responsibilities of a court representative; to provide for the appointment of temporary or emergency guardians in certain circumstances to prevent harm to an adult's physical health, safety, or welfare; to provide for the appointment of temporary or emergency conservators or other temporary or emergency relief in certain circumstances to prevent harm to an adult's property or financial interests; to allow the court to penalize attorneys or parties who improperly petition for temporary or emergency guardians or conservators; to revise the authority of a court to preserve and apply the property of a person who is the subject of an ongoing protective order proceeding; and to make nonsubstantive, technical revisions to update the existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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



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"§26-2-2

(a) For all guardianships, conservatorships, and other protective proceedings commencing before January 1, 2027, the
~~The~~ administration or conduct of any guardianship or conservatorship of a minor or incapacitated person may be removed from the probate court to the circuit court, at any time before the final settlement thereof by the guardian or conservator of any such guardianship or conservatorship or guardian ad litem or next friend of such ward or anyone entitled to support out of the estate of such ward without assigning any special equity, and an order of removal must be made by the court or judge upon the filing of a sworn petition by any such guardian or conservator or guardian ad litem or next friend for the ward or such person entitled to support out of the estate of such ward, reciting in what capacity the petitioner acts and that in the opinion of the petitioner such guardianship or conservatorship can be better administered in the circuit court than in the probate court.

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

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



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final settlement.

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

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

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

3. The alleged incapacitated person, prior to a determination of incapacity.

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

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

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

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

8. The State Department of Human Resources.

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

(2) To remove a proceeding from the probate court to the circuit court, the removing party shall file in the



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circuit court to which the proceeding is being removed a
notice of removal that contains all of the following:

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

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

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

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

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

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

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

b. An incorrect statement of any information required



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197 to be included in the notice of removal.

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

200 (5) If a necessary party to the proceedings does not
201 receive notice of the proceedings as required by law before
202 the notice of removal is filed, the removing party shall cause
203 notice of the proceeding to be issued to the necessary party
204 as provided in the Alabama Rules of Civil Procedure or as
205 otherwise provided by law.

206 (6) The circuit court may remand a proceeding removed
207 under this section to the probate court if the circuit court
208 finds any of the following:

209 a. The removal was sought for purpose of improper
210 delay.

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

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

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

218 (7)a. If the circuit court finds that an attorney or
219 party removed a proceeding vexatiously or for improper
220 purposes, the court may tax the attorney or party with the
221 costs of the proceeding. In doing so, the circuit court may
222 assess the full amount or any portion of the costs against any
223 offending attorney or party, or both, and among them, as the
224 court determines just.



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225 b. When granting an award of costs and attorney fees,
226 the court shall:

227 1. Specifically state the reasons for the award; and
228 2. In determining whether to assess attorney fees and
229 costs and the amount to be assessed, consider factors
230 including, but not limited to, those provided in Section
231 12-19-273.

232 c.1. Reasonable compensation for and expenses incurred
233 by an attorney, guardian ad litem, or party, including the
234 cost of experts to testify in or advise about the proceeding,
235 may be assessed under this subdivision.

236 2. Costs taxed under this subdivision shall be limited
237 to those incurred by the parties opposing an improperly
238 removed proceeding or incurred as a result of the improperly
239 removed proceeding.

240 d. Upon entry of an order taxing costs under this
241 subdivision, the clerk of the circuit court shall issue an
242 itemized bill of all costs and expenses taxed against each
243 person. The itemized bill shall have the full force and effect
244 of a judgment. The provisions of this paragraph are
245 cumulative.

246 (8) Following remand by the circuit court, the clerk of
247 the circuit court shall deliver a copy of the order of remand
248 and the record of all proceedings in the circuit court to the
249 clerk of the probate court, to be filed with the records of
250 the proceeding in the probate court. The probate court shall
251 proceed with the proceeding in accordance with the circuit
252 court's order.



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

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

"§26-2-3

(a) In any county where the judge of probate is required to be learned in the law, the administration or conduct of any guardianship or conservatorship of a minor or incapacitated person may be removed from the probate court to the circuit court pursuant to Section 26-2-2 at any time before a proceeding for final settlement ~~thereof~~ is commenced in probate court by the guardian or conservator of the guardianship or conservatorship or guardian ad litem or next friend of a ward or anyone entitled to support out of the estate of the ward without assigning any special equity. The circuit court shall remand the administration of a guardianship or conservatorship transferred pursuant to this section to the probate court if the circuit court finds that the removal was sought for the purpose of improper delay or did not comply with applicable law. The circuit court may remand the administration of a guardianship or conservatorship pursuant to this section to the probate court if the circuit court finds that any of the following apply:

(1) The circuit court has issued a final order or judgment on all contested matters pending before the circuit



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court in the administration of the guardianship or conservatorship and the time for an appeal of the order or judgment has expired without an appeal being filed or, if an appeal was filed, after the final adjudication of the appeal.

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

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

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

"§26-2A-20

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

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

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



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309 26-2A-148(a) .

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

311 (4) COURT REPRESENTATIVE. A person appointed in a
312 guardianship or protective proceeding who: (i) is trained in
313 law, nursing, or social work; (ii) is an officer, employee,
314 or special appointee of the court; (iii) and has no personal
315 interest in the proceeding.

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

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

320 (7) GUARDIAN. A person who has qualified as a guardian
321 of a minor or incapacitated person pursuant to parental or
322 spousal nomination or court appointment ~~and~~. The term includes
323 a limited guardian as described in Sections 26-2A-78(e) and
324 26-2A-105(c), but excludes ~~one~~ a person who is merely a
325 guardian ad litem.

326 (8) INCAPACITATED PERSON. Any person who is impaired by
327 reason of mental illness, mental deficiency, physical illness
328 or disability, physical or mental infirmities accompanying
329 advanced age, chronic use of drugs, chronic intoxication, or
330 other cause ~~(, except minority,)~~ to the extent of lacking
331 sufficient understanding or capacity to make or communicate
332 responsible decisions.

333 (9) LEASE. ~~Includes an~~ An oil, gas, or other mineral
334 lease.

335 (10) LETTERS. ~~Includes letters~~ Letters of guardianships
336 and letters of conservatorship.



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

(12) MINOR WARD. A minor for whom a guardian has been appointed solely because of minority.

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

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

(15)~~(14)~~ PARENT. ~~Includes any~~ Any person entitled to take, or who would be entitled to take if the child died without a will, as a parent by intestate succession from the child whose relationship is in question ~~and~~. The term excludes any person who is only a stepparent, foster parent, or grandparent.

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

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

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

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

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



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365 26-2A-137.

366 (21)~~(20)~~ PROTECTIVE PROCEEDING. A proceeding under ~~the~~
367 ~~provisions of~~ Division 3 of Article 2, ~~Division 3~~.

368 (22) RESPONDENT. An individual for whom: (i) a petition
369 requests the court to enter a protective order to appoint a
370 guardian or conservator; (ii) a protective arrangement is
371 sought; or (iii) any emergency or temporary guardian,
372 conservator, or other relief is requested.

373 (23)~~(21)~~ SECURITY. ~~Includes any~~ Any note~~;~~i stock~~;~~i
374 treasury stock~~;~~i bond, debenture~~;~~i evidence of indebtedness~~;~~i
375 certificate of interest or participation in an oil, gas, or
376 mining title or lease or in payments out of production under
377 such a title or lease~~;~~i collateral trust certificate,
378 transferable share~~;~~i voting trust certificate or, in general,
379 any interest or instrument commonly known as a security, or
380 any certificate of interest or participation~~;~~i any temporary
381 or interim certificate, receipt or certificate of deposit for,
382 or any warrant or right to subscribe to or purchase any of the
383 foregoing.

384 (24)~~(22)~~ WARD. A person for whom a guardian has been
385 appointed. ~~A "minor ward" is a minor for whom a guardian has~~
386 ~~been appointed solely because of minority."~~

387 "§26-2A-50

388 (a) If notice of a hearing on any petition is required,
389 other than a notice meeting specific notice requirements
390 otherwise provided under Sections 26-2A-103, 26-2A-107.1,
391 26-2A-134, and 26-2A-136.1, the petitioner shall cause notice
392 of the time and place of the hearing of any petition to be



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given to the person to be notified or to the attorney if the person has appeared by attorney or requested that notice be sent to an attorney.

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

(1) If by certified mail or commercial carrier, ~~By mailing a copy of~~ the notice shall be sent at least 14 days before the time set for the hearing ~~by certified, registered, or ordinary first-class mail~~ and addressed to the person being notified using the post office address given in the request for notice, if any, or to the person's office or place of residence, if known ~~+~~ .

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

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

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

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



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"§26-2A-52

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

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

(1)a. Meet with the respondent prior to court hearings and when apprised of emergencies or significant events impacting the respondent.

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

(2) Conduct a thorough and independent investigation. Unless otherwise directed by the court, the investigation shall include the following:

a. Obtaining and reviewing relevant documents.

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

c. Interviewing the respondent, if practicable.

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

e. Making reasonable efforts to ascertain the



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respondent's wishes.

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

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

(4) Advocate for appropriate services for the respondent.

(5) Advocate for the result that is the least restrictive in type, duration, and scope and consistent with an alleged incapacitated adult respondent's best interests.

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

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

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

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

(d) Unless otherwise provided by court order, a guardian ad litem's duties in a proceeding terminate: (i) when the court has issued a final order or judgment and the time



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for an appeal of the order or judgment has expired without an appeal being filed; or (ii) if an appeal was filed, after the final adjudication of the appeal.

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

"§26-2A-103

(a) Except as provided in Section 26-2A-107, in~~In~~ a proceeding for the appointment of a guardian of an incapacitated person,~~and, if notice is required in a proceeding for appointment of a temporary guardian,~~ notice of hearing ~~must~~ shall be given to each of the following:

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

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

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

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

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



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

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

"§26-2A-134

(a) On a petition for appointment of a conservator or other protective order, the requirements for notice described in Section 26-2A-103 apply, ~~but (i) if~~ except that:

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

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

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

"§26-2A-136

(a) The court shall exercise the authority conferred in



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this division to encourage the development of maximum self-reliance and independence of a protected person and make protective orders only to the extent necessitated by the protected person's mental and adaptive limitations and other conditions warranting the procedure.

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

~~(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice, the court may preserve and apply the property of the person to be protected as may be required for the support of the person or dependents of the person.~~

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

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



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

562 b. Convey or release contingent and expectant interests
563 in property, including marital property rights and any right
564 of survivorship incident to joint tenancy or tenancy by the
565 entirety;~~to exercise.~~

566 c. Exercise or release powers held by the protected
567 person as trustee, personal representative, custodian for
568 minors, conservator, or donee of a power of appointment;~~to~~
569 ~~enter.~~

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

571 e. Create revocable or irrevocable trusts of property
572 of the estate which may extend beyond the disability or life
573 of the protected person;~~to exercise.~~

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

576 g. Exercise rights to elect options and change
577 beneficiaries under insurance and annuity policies and to
578 surrender the policies for their cash value;~~to exercise.~~

579 h. Exercise any right to an elective share in the state
580 of the person's deceased spouse and to renounce or disclaim
581 any interest by testate or intestate succession or by inter
582 vivos transfer.

583 (c) The court may exercise or direct the exercise of
584 the following powers only if, after notice and hearing, the
585 court is satisfied;~~after notice and hearing,~~ that it is in
586 the best interest of the protected person~~,~~ and that the person
587 either is incapable of consenting or has consented to the
588 proposed exercise of power:



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

(2) To renounce or disclaim interests~~+~~.

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

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

(d) Except for the disability necessitating the appointment, a determination that a basis for appointment of a conservator or other protective order exists has no effect otherwise on the capacity of the protected person. A conservator has all the powers granted by this section, unless specifically limited by the court. A protected person does not have or possess powers granted to the conservator."

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

§26-2A-54

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

(b) Each court representative shall have training or experience in the type of abilities, limitations, and needs



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alleged in the petition, and have no personal interest in the proceedings. An appointed court representative shall be an officer, employee, or special appointee of the court.

(c) A court representative appointed under subsection (a) shall do all of the following:

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

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

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

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

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

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

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

(6) Investigate the allegations in the petition and any other matter relating to the petition as the court directs.

(7) File a report of the court representative's findings in a record with the court, unless waived by the



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court for good cause shown.

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

§26-2A-107.1

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

(1) The appointment of a temporary guardian or emergency guardian is likely to prevent substantial harm to the adult's physical health, safety, or welfare.

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

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

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

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



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673 parties:

674 a. The respondent.

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

676 c. Any other person that the court determines is an
677 appropriate party to the hearing.

678 (c) (1) The duration of authority of a temporary
679 guardian for an adult may not exceed 60 days. A temporary
680 guardian may exercise only the powers specified in the order
681 of appointment.

682 (2) Prior to the expiration of the duration of
683 authority granted to a temporary guardian for an adult under
684 subdivision (1), the duration of authority of a temporary
685 guardian for an adult may be extended for a second term of not
686 more than 60 days without a hearing, provided that the court
687 finds both of the following:

688 a. The conditions for appointment of a temporary
689 guardian in subsection (a) continue.

690 b. It is in the best interest of the respondent to
691 continue the appointment.

692 (3) Prior to the expiration of the second or any
693 subsequent term of the duration of authority granted to a
694 temporary guardian under subdivision (2), the authority of a
695 temporary guardian for an adult may be extended for a third or
696 subsequent term of not more than 60 days upon hearing and upon
697 the court finding that there is good cause to extend the
698 temporary appointment. Notice of the date, time, and place of
699 the hearing to extend the temporary appointment shall be given
700 in accordance with the requirements of subsection (b).



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

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

(3) If the court appoints an emergency guardian without giving notice under subsection (b), the court must do each of the following:

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

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

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

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

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



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a. Appoint a temporary guardian for the adult.

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

c. Grant such other relief as may be proper.

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

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

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

(h) (1) a. If the court finds that an attorney or party vexatiously or for improper purposes petitioned for appointment of a temporary guardian or emergency guardian, the court may tax the attorney or party with the costs of the proceeding.

b. The court may assess the full amount or any portion of the costs against any offending attorney or party, or both, and among them, as the court determines.

c. When granting an award of costs and attorney fees, the court shall specifically state the reasons for the award and shall consider the factors listed in Section 12-19-273, among others, in determining whether to assess attorney fees and costs and the amount to be assessed.

(2) The costs of an action that may be assessed under



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this subsection may include reasonable compensation for and expenses incurred by an attorney, guardian ad litem, or party, including the cost of experts to testify in or advise regarding the proceeding. Costs taxed under this subsection shall be limited to those incurred by the parties opposing an improperly brought petition for a temporary guardian or emergency guardian or incurred as a result of the improperly brought petition.

§26-2A-136.1

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

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

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

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



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(b)(1) Immediately upon the filing of a petition for appointment of a temporary conservator or emergency conservator or other temporary or emergency relief and if a guardian ad litem has not been appointed to represent the respondent, the court shall appoint a guardian ad litem to represent the respondent in the proceeding.

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

- a. The respondent.
- b. The respondent's guardian ad litem and attorney, if any.
- c. Any other person that the court determines is an appropriate party to the hearing.

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

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



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813 following:

814 a. The conditions for appointment of a temporary
815 conservator or for the granting of any other temporary relief
816 under subsection (a) continue.

817 b. It is in the interest of the respondent to continue
818 the appointment of a temporary conservator or granting of
819 temporary relief.

820 (3) Prior to the expiration of the second or any
821 subsequent term of the duration of authority granted to a
822 temporary conservator or the duration of any other temporary
823 relief under subdivision (2), the authority of a temporary
824 conservator or any other temporary relief may be extended for
825 a third or subsequent term of not more than 60 days upon
826 hearing and upon the court finding that there is good cause to
827 extend the temporary appointment or granting of temporary
828 relief. Notice of the date, time, and place of the hearing to
829 extend the temporary appointment or other temporary relief
830 shall be given in accordance with the requirements established
831 in subsection (b).

832 (d) (1) The court may appoint an emergency conservator
833 or grant other emergency relief without providing notice to
834 the respondent, the respondent's guardian ad litem, or any
835 attorney for the respondent only if the court finds from an
836 affidavit or testimony that the respondent's property or
837 financial interests will be substantially and irreparably
838 harmed before a hearing with notice on the appointment can be
839 held.

840 (2) The duration of authority of an emergency



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conservator may not exceed 10 days. The emergency conservator may exercise only the powers specified in the order of appointment. The duration of any other emergency relief may not exceed 10 days.

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

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

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

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

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

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

a. Appoint a temporary conservator for the adult.
b. Terminate the emergency conservatorship or other emergency relief without further appointment or relief.



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

870 (e) The appointment of a temporary conservator or
871 emergency conservator under this section is not a
872 determination that a basis exists for appointment of a
873 conservator or other protective order under Section 26-2A-130.

874 (f) The court may remove a temporary conservator or
875 emergency conservator appointed under this section at any
876 time.

877 (g) The court may order a temporary conservator or
878 emergency conservator to file a written report, the contents
879 of which may be determined by the court. A temporary
880 conservator or emergency conservator shall make any report the
881 court requires.

882 (h) (1) a. If the court finds that an attorney or party
883 vexatiously or for improper purposes petitioned for the
884 appointment of a temporary conservator or emergency
885 conservator, the court may tax the attorney or party with the
886 costs of the proceeding.

887 b. The court may assess the full amount or any portion
888 of the costs against any offending attorney or party, or both,
889 and among them, as the court determines is just.

890 c. When granting an award of costs and attorney fees,
891 the court shall specifically state the reasons for the award
892 and shall consider the factors in Section 12-19-273, among
893 others, in determining whether to assess attorney fees and
894 costs and the amount to be assessed.

895 (2) The costs of an action that may be assessed under
896 this subsection may include reasonable compensation for and



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897 expenses incurred by an attorney, guardian ad litem, or party,
898 including the costs of experts to testify in or advise
899 regarding the proceeding. Costs taxed under this subsection
900 shall be limited to those incurred by the parties opposing an
901 improperly brought petition for a temporary conservator or
902 emergency conservator or other temporary or emergency relief
903 or incurred as a result of the improperly brought petition.

904 Section 3. This act shall become effective on January
905 1, 2027.