

SB83 INTRODUCED



1 SB83
2 G3HLP62-1
3 By Senator Orr
4 RFD: Judiciary
5 First Read: 13-Jan-26



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

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

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

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

53 This bill would provide for the scope and
54 duration of authority of a temporary guardian,
55 emergency guardian, temporary conservator, and
56 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.

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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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85 requirements relating to the removal of proceedings involving
86 guardianships or conservatorships from probate court to the
87 circuit court; to further provide for notice requirements for
88 petitions involving a guardianship, conservatorship, or
89 protective proceeding; to require guardians ad litem to
90 undergo training before appointment in a case involving a
91 guardianship, conservatorship, or protective proceeding; to
92 specify the duties of such a guardian ad litem; to require the
93 court to appoint a court representative in proceedings
94 involving a guardianship or protective order, with exceptions;
95 to provide for the duties and responsibilities of a court
96 representative; to provide for the appointment of temporary or
97 emergency guardians in certain circumstances to prevent harm
98 to an adult's physical health, safety, or welfare; to provide
99 for the appointment of temporary or emergency conservators or
100 other temporary or emergency relief in certain circumstances
101 to prevent harm to an adult's property or financial interests;
102 to allow the court to penalize attorneys or parties who
103 improperly petition for temporary or emergency guardians or
104 conservators; to revise the authority of a court to preserve
105 and apply the property of a person who is the subject of an
106 ongoing protective order proceeding; and to make
107 nonsubstantive, technical revisions to update the existing
108 code language to current style.

109 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

110 Section 1. Sections 26-2-2, 26-2-3, 26-2A-20, 26-2A-50,
111 26-2A-52, 26-2A-103, 26-2A-134, and 26-2A-136 are amended to
112 read as follows:



113 "§26-2-2

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

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

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



141 final settlement.

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

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

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

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

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

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

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

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

164 8. The State Department of Human Resources.

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

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



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

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

173 b. Whether a jury trial is demanded under Section
174 26-2A-35.

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

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

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

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

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

196 b. An incorrect statement of any information required



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.



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.**



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

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

260 "§26-2-3

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

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

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

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

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

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

296 "§26-2A-20

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

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

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



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

341 (13) (12) MORTGAGE. Any conveyance, agreement, or
342 arrangement in which property is used as collateral.

343 (14) ~~(13)~~ ORGANIZATION. ~~Includes a~~ A corporation,
344 business trust, estate, trust, partnership, association, two
345 or more persons having a joint or common interest, government,
346 governmental subdivision or agency, or any other legal entity.

347 (15) ~~(14)~~ PARENT. ~~Includes any~~ Any person entitled to
348 take, or who would be entitled to take if the child died
349 without a will, as a parent by intestate succession from the
350 child whose relationship is in question ~~and~~. The term excludes
351 any person who is only a stepparent, foster parent, or
352 grandparent.

355 (17)~~(16)~~ PETITION. A written request to the court for
356 an order after notice.

357 (18) (17) PROCEEDING. ~~Includes action~~ Action at law and
358 suit in equity.

359 (19) ~~(18)~~ PROPERTY. ~~Includes both~~ Both real and personal
360 property or any interest therein and ~~means~~ anything that may
361 be the subject of ownership.

362 (20) (19) PROTECTED PERSON. A minor or other person for
363 whom a conservator has been appointed or other protective
364 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~~r~~; stock~~r~~;
374 treasury stock~~r~~; bond, debenture~~r~~; evidence of indebtedness~~r~~;
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~~r~~; collateral trust certificate,
378 transferable share~~r~~; voting trust certificate or, in general,
379 any interest or instrument commonly known as a security, or
380 any certificate of interest or participation~~r~~; 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



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

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

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

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

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

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

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



421 "§26-2A-52

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

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

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

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

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

440 a. Obtaining and reviewing relevant documents.
441 b. Interviewing the person who appears to have caused
442 the petition to be filed and any other person who is nominated
443 to serve as guardian or conservator.

444 c. Interviewing the respondent, if practicable.
445 d. Prior to a final hearing on the appointment of a
446 guardian or conservator, and at other times as necessary,
447 visiting the present dwelling of the respondent.

448 e. Making reasonable efforts to ascertain the



449 respondent's wishes.

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

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

457 (4) Advocate for appropriate services for the
458 respondent.

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

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

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

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

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

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



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

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

485 "§26-2A-103

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

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

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

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

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

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



505 (c) Notice must be served ~~personally~~ on the ~~alleged~~
506 ~~incapacitated person~~ respondent as provided in Section
507 26-2A-50(b)(2). Notices to other persons as required by
508 subsection ~~(a)(1) must (a) or (b) shall~~ be served ~~personally~~
509 ~~if the person to be notified can be found within the state. In~~
510 ~~all other cases, required notices must be given~~ as provided in
511 Section 26-2A-50.

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

514 "§26-2A-134

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

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

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

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

531 "§26-2A-136

532 (a) The court shall exercise the authority conferred in



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

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

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

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

552 (2) ~~(3)~~ After hearing and upon determining that a basis
553 for an appointment or other protective order exists with
554 respect to a person for reasons other than minority, the
555 court, for the benefit of the person and members of the
556 person's immediate family, has all the powers over the estate
557 and business affairs which the person could exercise if
558 present and not under disability, except the power to make a
559 will. Subject to subsection (c), those ~~powers~~ include, but are
560 not limited to, the powers to do the following: power to make



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 estate
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:



589 (1) To exercise or release powers of appointments of
590 which the protected person is done†.

591 (2) To renounce or disclaim interests†.

592 (3) To make gifts in trust or otherwise exceeding in
593 the aggregate 20 percent of the year's income of the estate†
594 and.

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

604 Section 2. Sections 26-2A-54, 26-2A-107.1, and
605 26-2A-136.1 are added to the Code of Alabama 1975, to read as
606 follows:

607 §26-2A-54

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



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

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

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

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

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

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

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

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

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

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

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



645 court for good cause shown.

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

650 §26-2A-107.1

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

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

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

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

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

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



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).



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

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

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

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

717 1. The respondent;

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

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

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

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

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729 a. Appoint a temporary guardian for the adult.

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

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

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

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

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

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

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

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

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



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

765 \$26-2A-136.1

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

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

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

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



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

796 a. The respondent.

799 c. Any other person that the court determines is an
800 appropriate party to the hearing.

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



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

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

848 a. Give notice of the appointment of the emergency
849 conservator or the granting of emergency relief not later than
850 48 hours after the appointment to:

851 1. The respondent;

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

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

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

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

866 a. Appoint a temporary conservator for the adult.

867 b. Terminate the emergency conservatorship or other
868 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.