

2021 Cal AB 1194

Chaptered, September 30, 2021

Reporter

2021 Cal ALS 417; 2021 Cal AB 1194; 2021 Cal Stats. ch. 417

CALIFORNIA ADVANCE LEGISLATIVE SERVICE > 2021 Regular Session > CHAPTER 417 > Assembly Bill No. 1194

Notice

Added: Text highlighted in green

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Digest

LEGISLATIVE COUNSEL'S DIGEST

AB 1194, Low. Conservatorship.

Existing law, the Guardianship-Conservatorship Law generally establishes the standards and procedures for the appointment and termination of an appointment for a guardian or conservator of a person, an estate, or both. Existing law, the Professional Fiduciaries Act, establishes the Professional Fiduciaries Bureau within the Department of Consumer Affairs, and requires the bureau to license and regulate professional fiduciaries. The act defines a "professional fiduciary" as, among other things, a person who acts as a guardian or conservator of the person, the estate, or the person and estate, for 2 or more individuals at the same time who are not related to the professional fiduciary or to each other. Existing law requires the court to be guided by what appears to be the best interests of the proposed conservatee in selecting a conservator, and sets forth an order of preference for appointment if there are multiple persons equally qualified to be the conservator.

This bill would require a professional fiduciary with an internet website to post a schedule of the range of fees on their internet website and would require a professional fiduciary without an internet website to provide that schedule, as specified. The bill would require the bureau to impose specified sanctions on a professional fiduciary's license upon a finding of a violation of applicable statutes or regulations, a breach of fiduciary duty where there is a finding of serious financial or physical harm or mental suffering, or that the professional fiduciary has engaged in defined acts of abuse, as specified. If the court finds that a conservator who is a professional fiduciary has abused a conservatee, the bill would make the conservator liable for a civil penalty of up to \$10,000 for each separate act of abuse, payable to the estate of the conservatee. The bill would make a conservator who is not a professional

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fiduciary who abuses a conservatee liable for civil penalties of up to \$1,000 for each separate act of abuse, payable to the estate of the conservatee.

This bill would require the bureau to investigate specified allegations and would authorize the bureau to impose upon a professional fiduciary, as a sanction for violation of their duties, a restitution order, as specified. The bill would require the bureau to revoke a professional fiduciary's license if the person knowingly, intentionally, or willfully violated a legal duty or breached a fiduciary duty to a client or if the person caused serious physical or financial harm or mental suffering to a client through gross negligence or gross incompetence.

Existing law conditioned upon an appropriation by the Legislature a requirement that a court investigator undertake specified actions regarding a proposed conservatee, including interviewing the proposed conservatee. Existing law authorizes specified persons to petition the court to take specified actions regarding a conservatorship.

This bill would, also contingent upon an appropriation, revise the information that a court investigator is required to gather and review and the determinations the investigator is required to make. The bill would authorize an interested person, as defined, with personal knowledge of a conservatee to petition the court to investigate an allegation of physical abuse or financial abuse of a conservatee by a conservator, and would require the court to investigate those allegations that establish a prima facie case of abuse.

Existing law requires the court to appoint the public defender or private counsel to represent interests of a conservatee, proposed conservatee, or person alleged to lack legal capacity who is unable to retain legal counsel and requests the appointment of counsel to assist them in particular proceedings that include, among others, proceedings to establish a conservatorship or to remove the conservator, whether or not that person lacks or appears to lack legal capacity. The law also requires the court to appoint the public defender or private counsel in these proceedings to represent the interests of a conservatee or proposed conservatee who does not plan to retain legal counsel and has not requested the court to appoint legal counsel, if the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee based on information contained in the court investigator's report or obtained from any other source, whether or not that person lacks or appears to lack legal capacity.

This bill would, instead, require the court to appoint the public defender or private counsel if the conservatee or proposed conservatee has not retained legal counsel and does not plan to retain legal counsel. The bill would generally require the court to allow representation by an attorney for whom a conservatee, proposed conservatee, or person alleged to lack legal capacity expresses a preference, even if the attorney is not on the court's list of court-appointed attorneys, unless the counsel cannot provide zealous advocacy or has a conflict of interest. The bill would specify that the role of legal counsel for a conservatee, proposed conservatee, or person alleged to lack legal capacity is that of a zealous, independent advocate, observing specified legal requirements.

Existing law prescribes the process for petitioning to terminate a conservatorship or limited conservatorship or to appoint a new conservator. Existing law specifies a process for hearings on the termination or revision of conservatorships and the review of conservatorships.

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This bill would, contingent upon an appropriation by the Legislature in many cases, make various changes to those processes. The bill would require that the court, at specified hearings, consider terminating the conservatorship and would authorize the court in specified circumstances to modify the conservatorship so that the conservatorship is the least restrictive alternative needed for the protection of the conservatee.

Existing law prohibits a guardian or trustee who is not a trust company from hiring or referring business to an entity in which the guardian or trustee has a financial interest, except upon authorization of the court. Existing law prohibits compensating a guardian or trustee from the estate for the costs or fees they incurred in unsuccessfully opposing a petition or other action made by or on behalf of a ward or conservatee, unless the court determines the opposition was made in good faith, based on the best interests of the ward or conservatee. If the court removes the guardian or conservatee for cause, existing law requires the court to award the petitioner for that removal the costs of the petition and other expenses and costs of litigation, unless the court determines the guardian or conservator acted in good faith, based on the best interests of the ward or conservatee.

This bill would prohibit a guardian or trustee who is not a trust company, or an employee of such a guardian or conservator, to hire or refer business to an entity in which they have a financial interest. The bill would prohibit a guardian or conservator from being compensated from the estate for any costs or fees that they incurred in unsuccessfully defending their fee request petition, opposing a petition, or any other unsuccessful request or action made by, or on behalf of, the ward or conservatee. The bill would authorize the court to reduce the compensation requested in the petition if the court determines, by clear and convincing evidence, that the defense was made in good faith, was based on the best interest of the ward or conservatee, and did not harm the ward or conservatee. The bill would require the court to award the costs of the petition and other expenses and costs of litigation to a successful petitioner if a guardian or conservatee is removed for cause. The bill would require the Judicial Council to report to the Legislature, on or before January 1, 2024, regarding specified findings and recommendations on court effectiveness in conservatorship cases.

Synopsis

An act to amend Section 6580 of, and to add Section 6563 to, the Business and Professions Code, and to amend Sections 1051, 1460, 1471, 1826, 1850, 1850.5, 1851, 1851.1, 1860, 1860.5, 1862, 1863, 2250, 2250.6, 2253, 2401, 2620, 2623, 2640, 2641, and 2653 of, to add Sections 1851.6 and 2112 to, and to add and repeal Section 1458 of, the Probate Code, relating to conservatorship.

[Approved by Governor September 30, 2021. Filed with Secretary of State September 30, 2021.]

Text

The people of the State of California do enact as follows:

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SECTION 1. Section 6563 is added to the Business and Professions Code, to read:

6563.

- (a) On or before January 1, 2023, a licensee with an internet website shall post on that internet website a schedule or range of the licensee's fees, including, but not limited to, hourly fees, for services offered.
- (b) On or after January 1, 2023, a licensee who does not have an internet website shall do all of the following:
 - (1) Provide a prospective client, before the execution of a contract for services, a schedule or range of the licensee's fees, including, but not limited to, hourly fees, for services offered.
 - (2) Upon receipt of a request, provide a client with a schedule or range of the licensee's fees, including, but not limited to, hourly fees, for services offered.
 - (3) If the prospective or current client is a proposed or current conservatee, provide all interested persons, as defined in paragraph (2) of subdivision (b) of Section 1822 of the Probate Code, with a schedule or range of the licensee's fees, including, but not limited to, hourly fees, for services offered.

SEC. 2. Section 6580 of the Business and Professions Code is amended to read:

6580.

(a)

- (1) The bureau may upon its own, and shall, upon the receipt of a complaint from any person, investigate the actions of a professional fiduciary, including a person with a license that either restricts or prohibits the practice of that person as a professional fiduciary, including, but not limited to, a license that is retired, inactive, canceled, or suspended.
- (2) The bureau shall ~~review~~ investigate a professional fiduciary's alleged violation of statute, regulation, or the Professional Fiduciaries Code of Ethics and any other complaint referred to it by the public, a public agency, or the department, and ~~may~~ shall impose sanctions upon a finding ~~of a violation or a breach of fiduciary duty.~~ that the professional fiduciary did any of the following:
 - (A) Breached a legal or fiduciary duty to a client and thereby caused financial or physical harm or mental suffering to the client.
 - (B) Abused an elder or a dependent adult client, as defined in Section 15610.07 of the Welfare and Institutions Code.
 - (C) Violated a statute or regulation related to this chapter.
- (3) Paragraph (2) applies, but is not limited to, all of the following referrals:

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(A)

(i) A report from a court that the court has taken any of the following actions:

(I) Imposed a penalty on the professional fiduciary, as provided in subdivision (d) of Section 1051 of the Probate Code.

(II) Removed the professional fiduciary as a conservator or guardian for cause, as provided in paragraph (3) of subdivision (c) of Section 2653 of the Probate Code.

(III) Determined that the professional fiduciary has abused a conservatee, as provided in subdivision (a) of Section 2112 of the Probate Code.

(ii) The report from the court pursuant to this subparagraph shall include a copy of the court's finding and order and may include other supporting documentation. However, failure of the court to provide supporting documentation does not relieve the bureau of its duty to take action.

(B) A certified copy of a judicial or administrative finding that a professional fiduciary's violation of law, breach of fiduciary duty, or abuse, as defined in Section 15610.07 of the Welfare and Institutions Code, caused harm to a conservatee or ward in their care.

(4) If a court makes a referral described in paragraph (2), the court shall provide the bureau, at no charge, with access to the information, including confidential information, regarding its investigation of the professional fiduciary that is contained in court records. The bureau shall not disclose any confidential information contained in court records and shall use that information only for purposes of investigating allegations against the professional fiduciary or in a criminal, civil, or administrative proceeding brought by the bureau against the professional fiduciary. Confidential information derived from a court record and filed in a criminal, civil, or administrative proceeding shall be kept in the confidential portion of the court case file. If the bureau does not bring a criminal, civil, or administrative proceeding against the professional fiduciary as a result of the allegation, the bureau shall destroy the records in its possession that contain confidential information as soon as it determined that no further action will be taken regarding the allegations. This paragraph does not affect the admissibility of confidential information as evidence in a criminal proceeding.

(b) Sanctions shall include any of the following:

(1) Administrative citations and fines as provided in Section 125.9 for a violation of this chapter, the Professional Fiduciaries Code of Ethics, or any regulation adopted under this chapter.

(2) License suspension, probation, or revocation.

(c) The bureau shall provide on ~~the Internet information regarding any~~ its internet website information regarding sanctions imposed by the bureau on licensees, including, but not limited to, information regarding citations, fines, suspensions, and revocations of licenses or other related enforcement action taken by the bureau relative to the licensee.

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- (d) The bureau shall revoke the professional fiduciary's license if it finds that the professional fiduciary did either of the following:
- (1) Knowingly, intentionally, or willfully breached a legal or fiduciary duty to an elder or dependent adult client that constitutes abuse of the client, as defined in Section 15610.07 of the Welfare and Institutions Code.
 - (2) Caused serious physical or financial harm or mental suffering to a client through gross negligence or gross incompetence.

SEC. 3. Section 1051 of the Probate Code is amended to read:

1051.

- (a) In the absence of a stipulation to the contrary between parties who have filed pleadings in a proceeding under this code, there shall be no ex parte communications between any party, or attorney for the party, and the court concerning a subject raised in those pleadings, except as permitted or required by law.
- (b) Notwithstanding subdivision (a), in any case upon which the court has exercised its jurisdiction, the court may refer to the court investigator or take other appropriate action in response to an ex parte communication regarding either or both of the following:
- (1) A fiduciary, as defined in Section 39, about the fiduciary's performance of their duties and responsibilities, ~~and~~.
 - (2) A person who is the subject of a conservatorship or guardianship proceeding under Division 4 (commencing with Section 1400).
- (c) ~~Any~~ An action by the court pursuant to ~~this~~ subdivision (b) shall be consistent with due process and the requirements of this code. The court shall disclose the ex parte communication to all parties and counsel. The court may, for good cause, dispense with the disclosure if necessary to protect the ward or conservatee from harm.
- ~~(c)(d) The Judicial Council shall, on or before January 1, 2008, adopt a rule of court to implement this section~~ If the court imposes a penalty, including, but not limited to, a surcharge, punishment for contempt, suspension, or removal, on a professional fiduciary, the court shall report that action to the Professional Fiduciaries Bureau. If the court reports an action taken under this section, the court shall provide the bureau, at no charge, with access to the information, including confidential information, regarding its investigation of the professional fiduciary contained in the court records. The bureau shall maintain the confidentiality of the information, as required by paragraph (4) of subdivision (a) of Section 6580 of the Business and Professions Code or any other applicable state or federal law.
- ~~(d) Subdivisions (a) and (b) of this section shall become operative on January 1, 2008.~~

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- (e) A superior court shall not be required to perform any duties imposed by this section until the Legislature makes an appropriation identified for this purpose.

SEC. 4. Section 1458 is added to the Probate Code, to read:

1458.

- (a) On or before January 1, 2024, the Judicial Council shall report to the Legislature the findings of a study measuring court effectiveness in conservatorship cases, including the effectiveness of protecting the legal rights and best interests of a conservatee. The report shall include all of the following, with respect to the courts chosen for evaluation pursuant to subdivision (b):

- (1) Caseload statistics from the 2018-19 fiscal year, for both temporary and general probate conservatorships, including, at a minimum, all of the following:

- (A) The number of petitions filed requesting appointment of a conservator, the number of those petitions granted, and the number denied, with cases in which a professional fiduciary was appointed presented separately from cases in which a nonprofessional conservator was appointed.
- (B) The number of conservatorships under court supervision at the end of the fiscal year in which a court investigation was conducted, with cases in which a professional fiduciary was appointed presented separately from cases in which a nonprofessional conservator was appointed.
- (C) The number of conservatorships under court supervision at the end of the fiscal year in which a court review hearing was held, with cases in which a professional fiduciary was appointed presented separately from cases in which a nonprofessional conservator was appointed.
- (D) The number of petitions or objections filed by or on behalf of a conservatee challenging a conservator's action, failure to act, accounting, or compensation; the number of those petitions that were granted; and the number of petitions that were denied, with cases in which a professional fiduciary was appointed presented separately from cases in which a nonprofessional conservator was appointed.
- (E) The number of conservatorships under court supervision in which accountings due, and the number of accountings received after they were due, or not received at all, with cases in which a professional fiduciary was appointed presented separately from cases in which a nonprofessional conservator was appointed.
- (F) The number of conservatorships of the estate, or of the person and the estate, under court supervision in which bond was not required of the conservator, with cases in which a professional fiduciary was appointed presented separately from cases in which a nonprofessional conservator was appointed.

- (2) An analysis of compliance with statutory timeframes in the 2018-19 fiscal year.

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- (3) A description of any operational differences between courts that affect the processing of conservatorship cases, including timeframes and steps taken to protect the legal rights and best interests of conservatees.
- (b) The Judicial Council shall select at least three courts for the evaluation required by this section, including one small court, one medium-sized court, and one large court.
- (c) The report shall include recommendations for statewide performance measures to be collected, best practices that serve to protect the legal rights of conservatees, and staffing needs to meet case processing requirements.
- (d) The report shall be submitted pursuant to Section 9795 of the Government Code.
- (e) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 5. Section 1460 of the Probate Code is amended to read:

1460.

- (a) Subject to Sections 1202 and 1203, if notice of hearing is required under this division but the applicable provision does not fix the manner of giving notice of hearing, the notice of the time and place of the hearing shall be given at least 15 days before the day of the hearing as provided in this section.
- (b) Subject to subdivision (e), the petitioner, who includes, for purposes of this section, a person filing a petition, report, or account, shall cause the notice of hearing to be delivered pursuant to Section 1215, to each of the following persons:
 - (1) The guardian or conservator.
 - (2) The ward or the conservatee.
 - (3) The spouse of the ward or conservatee, if the ward or conservatee has a spouse, or the domestic partner of the conservatee, if the conservatee has a domestic partner.
 - (4) Any person who has requested special notice of the matter, as provided in Section 2700.
 - (5) For any hearing on a petition to terminate a guardianship, to accept the resignation of a guardian, or to remove ~~the~~ a guardian, the persons described in subdivision (c) of Section 1510.
 - (6) For any hearing ~~on a petition to terminate~~ to consider terminating a conservatorship, to accept the resignation of a conservator, or to remove ~~the~~ a conservator, the persons described in subdivision (b) of Section 1821.
- (c) The clerk of the court shall cause the notice of the hearing to be posted as provided in Section 1230 if the posting is required by subdivision (c) of Section 2543.

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- (d) Except as provided in subdivision (e), this section does not excuse compliance with the requirements for notice to a person who has requested special notice pursuant to Chapter 10 (commencing with Section 2700) of Part 4.
- (e) The court, for good cause, may dispense with the notice otherwise required to be given to a person as provided in this section.

SEC. 6. Section 1471 of the Probate Code is amended to read:

1471.

- (a) If a conservatee, proposed conservatee, or person alleged to lack legal capacity is unable to retain legal counsel and requests the appointment of counsel to assist in the particular matter, whether or not that person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the ~~interest of that~~ person in the following proceedings under this division:
 - (1) A proceeding to establish or transfer a conservatorship or to appoint a proposed conservator.
 - (2) A proceeding to terminate the conservatorship.
 - (3) A proceeding to remove the conservator.
 - (4) A proceeding for a court order affecting the legal capacity of the conservatee.
 - (5) A proceeding to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee's place of residence.
- (b) If a conservatee or proposed conservatee ~~does not plan to retain~~ ~~has not retained~~ legal counsel and ~~has not requested the court to appoint~~ ~~does not plan to retain~~ legal counsel, whether or not that person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the ~~interests of that~~ person in any proceeding listed in subdivision (a) ~~if, based on information contained in the court investigator's report or obtained from any other source, the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee.~~
- (c) In any proceeding to establish a limited conservatorship, if the proposed limited conservatee has not retained legal counsel and does not plan to retain legal counsel, the court shall immediately appoint the public defender or private counsel to represent the proposed limited conservatee. The proposed limited conservatee shall pay the cost for that legal service if ~~he or she is~~ ~~they are~~ able. This subdivision applies irrespective of any medical or psychological inability to attend the hearing on the part of the proposed limited conservatee as allowed in Section 1825.
- (d) If a conservatee, proposed conservatee, or person alleged to lack legal capacity expresses a preference for a particular attorney to represent them, the court shall allow representation by the preferred

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attorney, even if the attorney is not on the court's list of a court-appointed attorneys, and the attorney shall provide zealous representation as provided in subdivision (e). However, an attorney who cannot provide zealous advocacy or who has any conflict of interest with respect to the representation of the conservatee, proposed conservatee, or person alleged to lack legal capacity shall be disqualified.

(e) The role of legal counsel of a conservatee, proposed conservatee, or a person alleged to lack legal capacity is that of a zealous, independent advocate representing the wishes of their client, consistent with the duties set forth in Section 6068 of the Business and Professions Code and the California Rules of Professional Conduct.

(f) In an appeal or writ proceeding arising out of a proceeding described in this section, if a conservatee or proposed conservatee is not represented by legal counsel, the reviewing court shall appoint legal counsel to represent the conservatee or proposed conservatee before the court.

SEC. 7. Section 1826 of the Probate Code is amended to read:

1826.

(a) Regardless of whether the proposed conservatee attends the hearing, the court investigator shall do all of the following:

(1) Conduct the following interviews:

(A) The proposed conservatee personally.

(B) All petitioners and all proposed conservators who are not petitioners.

(C) The proposed conservatee's spouse or registered domestic partner and relatives within the first degree. If the proposed conservatee does not have a spouse, registered domestic partner, or relatives within the first degree, to the greatest extent possible, the proposed conservatee's relatives within the second degree.

(D) To the greatest extent practical and taking into account the proposed conservatee's wishes, the proposed conservatee's relatives within the second degree not required to be interviewed under subparagraph (C), neighbors, and, if known, close friends.

(2) Inform the proposed conservatee of the contents of the petition and citation, of the nature, purpose, and effect of the proceeding, and of the right of the proposed conservatee to oppose the proceeding, to attend the hearing on the petition, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(3) Determine if it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing.

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- (4) Review the allegations of the petition as to why the appointment of the conservator is required and, in making ~~his or her~~ the determination, do the following:
- (A) Refer to the supplemental information form submitted by the petitioner and consider the facts set forth in the form that address each of the categories specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1821, as well as the medical reports received pursuant to paragraph (11).
- (B) ~~Consider~~ Determine, to the extent practicable, ~~whether he or she~~ or possible, whether the court investigator believes the proposed conservatee suffers from any of the mental function deficits listed in subdivision (a) of Section 811 that significantly impairs the proposed conservatee's ability to understand and appreciate the consequences of ~~his or her~~ the proposed conservatee's actions in connection with any of the functions described in subdivision (a) or (b) of Section 1801 and ~~identify~~ describe the observations that support that belief, including information in the medical reports received pursuant to paragraph (11).
- (5) Determine if the proposed conservatee wishes to ~~contest~~ oppose the establishment of the conservatorship.
- (6) Determine if the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.
- (7) Determine if the proposed conservatee wishes to be represented by legal counsel and, if so, whether the proposed conservatee has retained legal counsel and, if not, ~~the name of an attorney~~ whether the proposed conservatee ~~wishes~~ plans to retain legal counsel.
- (8) If the proposed conservatee does not plan to retain legal counsel, determine if the proposed conservatee desires the court to appoint legal counsel.
- (9) Determine if the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the proposed conservatee in a case where the proposed conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.
- (8)(10)**
- (A) Determine if the proposed conservatee is incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and may be disqualified from voting pursuant to Section 2208 of the Elections Code.
- (B) The proposed conservatee shall not be disqualified from voting on the basis that ~~he or she~~ the proposed conservatee does, or would need to do, any of the following to complete an affidavit of voter registration:
- (i) Signs the affidavit of voter registration with a mark or a cross pursuant to subdivision (b) of Section 2150 of the Elections Code.

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(ii) Signs the affidavit of voter registration by means of a signature stamp pursuant to Section 354.5 of the Elections Code.

(iii) Completes the affidavit of voter registration with the assistance of another person pursuant to subdivision (d) of Section 2150 of the Elections Code.

(iv) Completes the affidavit of voter registration with reasonable accommodations.

~~(9)(11) #~~ Gather and review relevant medical reports regarding the proposed conservatee ~~has not retained legal counsel, determine if the proposed conservatee desires the court to appoint legal counsel~~ from the proposed conservatee's primary care physician and other relevant mental and physical health care providers.

~~(10) Determine if the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the proposed conservatee in a case where the proposed conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.~~

~~(11)(12)~~ Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the proposed conservatee's express communications concerning both of the following:

(A) Representation by legal counsel.

(B) If the proposed conservatee is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefers that another person act as conservator.

~~(12)(13)~~ Deliver pursuant to Section 1215, at least five days before the hearing, a copy of the report referred to in paragraph ~~(11)~~ ~~(12)~~ to all of the following:

(A) The attorney, if any, for the petitioner.

(B) The attorney, if any, for the proposed conservatee.

(C) The proposed conservatee.

(D) The spouse, registered domestic partner, and relatives within the first degree of the proposed conservatee who are required to be named in the petition for appointment of the conservator, unless the court determines that the delivery will harm the conservatee.

(E) Any other persons as the court orders.

(b) The court investigator has discretion to release the report required by this section to the public conservator, interested public agencies, and the long-term care ombudsperson.

(c)

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- (1) The report required by this section is confidential and shall be made available only to parties, persons described in paragraph (13) of subdivision (a), persons given notice of the petition who have requested this report or who have appeared in the proceedings, their attorneys, and the court. The court has discretion at any other time to release the report, if it would serve the interests of the conservatee. The clerk of the court shall provide for the limitation of the report exclusively to persons entitled to its receipt.
- (2) Notwithstanding paragraph (1), confidential medical information and confidential information from the California Law Enforcement Telecommunications System (CLETS) shall be placed in a separate attachment to the report and shall be made available only to the proposed conservatee and the proposed conservatee's attorney.
- (d) This section does not apply to a proposed conservatee who has personally executed the petition for conservatorship, or a proposed conservatee who has nominated ~~his or her~~ their own conservator, if ~~he or she~~ the proposed conservatee attends the hearing.
- (e) If the court investigator has performed an investigation within the preceding six months and furnished a report thereon to the court, the court may order, upon good cause shown, that another investigation is not necessary or that a more limited investigation may be performed.
- (f) An investigation by the court investigator related to a temporary conservatorship also may be a part of the investigation for the general petition for conservatorship, but the court investigator shall make a second visit to the proposed conservatee and the report required by this section shall include the effect of the temporary conservatorship on the proposed conservatee.
- (g) The Judicial Council shall, on or before January 1, ~~2009, adopt~~ 2023, update the rules of court and Judicial Council forms as necessary to implement ~~an expedited procedure to authorize, by court order, a proposed conservatee's health care provider to disclose confidential medical information about the proposed conservatee to a court investigator pursuant to federal medical information privacy regulations promulgated under the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191)~~ this section.
- (h)
- (1) A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by Chapter 493 of the Statutes of 2006 until the Legislature makes an appropriation identified for this purpose.
- (2) A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by the measure that added this paragraph until the Legislature makes an appropriation identified for this purpose.

SEC. 8. Section 1850 of the Probate Code is amended to read:

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1850.

(a) Except as provided in subdivision ~~(b)~~(e), each conservatorship ~~initiated~~ established pursuant to this part shall be reviewed by the court as follows:

(1) ~~At the expiration of~~ Six months after the initial appointment of the conservator, the court investigator shall visit the conservatee, conduct an investigation ~~in accordance with the provisions of~~ as provided in subdivision (a) of Section 1851, and report to the court regarding the appropriateness of the conservatorship and whether the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental health treatment, and finances. ~~The court may.~~ In response to the investigator's report, the court may take appropriate action including, but not limited to: ordering a hearing or ordering the conservator to submit an accounting pursuant to subdivision (a) of Section 2620.

~~(A) Ordering a review of the conservatorship pursuant to subdivision (b).~~

~~(B) Ordering the conservator to submit an accounting pursuant to subdivision (a) of Section 2620.~~

(2) One year after the initial appointment of the conservator and annually thereafter. ~~However, at the review that occurs one year after the appointment of the conservator, and every subsequent review conducted pursuant to this paragraph, the court may set the next review in two years if the court determines that the conservator is acting in the best interest interests of the conservatee. In these cases,~~ the court investigator shall, as provided in Section 1851, visit the conservatee, conduct an investigation, and report the findings of the investigation to the court. On receipt of the investigator's report, the court shall ~~require the investigator to conduct an investigation pursuant to subdivision (a) of Section 1851 one year before the next review and file a status report in the conservatee's court file regarding whether the conservatorship still appears to be warranted and whether the conservator is acting in the best interests of the conservatee. If the investigator determines pursuant to this investigation that the conservatorship still appears to be warranted and that the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances, no hearing or court action in response to the investigator's report is required~~ consider terminating the conservatorship at a hearing pursuant to Section 1863 and take any other appropriate action.

(b) At any time, the court may, on its own motion or upon request by any interested person, take appropriate action including, but not limited to, ordering a review of the conservatorship, ~~including~~ at a noticed hearing, ~~and~~ or ordering the conservator to ~~present an accounting of the assets of the estate~~ submit an accounting pursuant to Section 2620.

(c) Notice of a review hearing pursuant to ~~subdivision (b) shall be provided to all persons listed in subdivision (b) of Section 1822~~ this section shall be given to the persons, for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(d) This chapter does not apply to either of the following:

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- (1) A conservatorship for an absentee as defined in Section 1403.
- (2) A conservatorship of the estate for a nonresident of this state where the conservatee is not present in this state.

~~(e) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.~~

(f)(e)

- (1) A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by Chapter 493 of the Statutes of 2006 until the Legislature makes an appropriation identified for this purpose.
- (2) A superior court shall not be required to perform any duties imposed pursuant to the measure that added this paragraph until the Legislature makes an appropriation identified for this purpose.

SEC. 9. Section 1850.5 of the Probate Code is amended to read:

1850.5.

- (a) Notwithstanding Section 1850, each limited conservatorship for a developmentally disabled adult, as defined in subdivision (d) of Section 1801, shall be reviewed by the court one year after the appointment of the conservator and biennially thereafter.
- (b) The court may, on its own motion or upon request by any interested person, take appropriate action, including, but not limited to, ordering a review of the limited conservatorship, ~~including~~ at a noticed hearing, at any time.
- (c) At any review pursuant to this section, the court shall consider terminating the limited conservatorship, as provided in Section 1860.5.
- (d) Notice of a review hearing pursuant to this section shall be given to the persons, for the period and in the manner provided in subdivision (d) of Section 1860.5.

(c)(e)

- (1) A superior court shall not be required to perform any duties imposed by this section until the Legislature makes an appropriation identified for this purpose.
- (2) A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by the measure that added this paragraph until the Legislature makes an appropriation identified for this purpose.

SEC. 10. Section 1851 of the Probate Code is amended to read:

1851.

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(a)

(1) If court review is required pursuant to Section 1850.1850 or 1850.5, the court investigator shall, without prior notice to the conservator except as ordered by the court for necessity or to prevent harm to the conservatee, visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine all of the following:

(A) If the conservatee wishes ~~to petition the court for termination of~~ the court to terminate the conservatorship.

(B) If the conservatee ~~is still in need of the conservatorship~~ wishes the court to remove the conservator and appoint a successor conservator.

(C) If both of the following are true:

(i) The conservatee still meets the criteria for appointment of a conservator of the person under subdivision (a) of Section 1801, a conservator of the estate under subdivision (b) of Section 1801, or both.

(ii) The conservatorship remains the least restrictive alternative needed for the protection of the conservatee, as required by subdivision (b) of Section 1800.3.

(C)(D) If the conservator is acting in the best interests of the conservatee. In determining if the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include an examination of the conservatee's placement, the quality of care, including physical and mental health treatment, and the conservatee's finances. To the extent practicable, the investigator shall review the accounting with a conservatee who has sufficient capacity. To the greatest extent possible, the court investigator shall interview individuals set forth in paragraph (1) of subdivision (a) of Section 1826, in order to determine if the conservator is acting in the best interests of the conservatee.

(D)(E)

(i) If the conservatee is incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process and may be disqualified from voting pursuant to Section 2208 or 2209 of the Elections Code.

(ii) The conservatee shall not be disqualified from voting on the basis that ~~he or she~~ the conservatee does, or would need to do, any of the following to complete an affidavit of voter registration:

(I) Signs the affidavit of voter registration with a mark or a cross pursuant to subdivision (b) of Section 2150 of the Elections Code.

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- (II) Signs the affidavit of voter registration by means of a signature stamp pursuant to Section 354.5 of the Elections Code.
- (III) Completes the affidavit of voter registration with the assistance of another person pursuant to subdivision (d) of Section 2150 of the Elections Code.
- (IV) Completes the affidavit of voter registration with reasonable accommodations.
- (2) If the court ~~has made an order under Chapter 4 (commencing with Section 1870), the court~~ investigator determines that the conservatee still meets the criteria for appointment of a conservator under Section 1801, the investigator shall determine if the ~~present condition of the conservatee is such that the~~ terms of the ~~to reduce~~ or ~~the order revoked~~ expand the conservator's powers and duties to ensure that the conservatorship is the least restrictive alternative needed for the conservatee's protection.
- (3) Upon request of the court investigator, the conservator shall make available to the court investigator during the investigation for inspection and copying all books and records, including receipts and any expenditures, of the conservatorship.
- (b)
- (1) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days before the date of review. A copy of the report shall be delivered pursuant to Section 1215 to the ~~conservator and to~~ conservatee, the conservator, and the attorneys of record for the conservator and conservatee at the same time it is certified to the court. A copy of the report, modified as set forth in paragraph (2), also shall be delivered pursuant to Section 1215 to the conservatee's spouse or registered domestic partner, and the conservatee's relatives in the first degree, and or, if there are no such relatives, to the next closest relative, unless the court determines that the delivery will harm the conservatee.
- (2) Confidential medical information and confidential information from the California Law Enforcement Telecommunications System shall be in a separate attachment to the report and shall not be provided in copies sent to the conservatee's spouse or registered domestic partner, and the conservatee's relatives in the first degree, and or, if there are no such relatives, to the next closest relative.
- (c) In the case of a limited conservatee, the court investigator shall recommend ~~continuing or terminating~~ whether to continue, modify, or terminate the limited conservatorship.
- (d) The court investigator may personally visit the conservator and any other persons as may be necessary to determine if the conservator is acting in the best interests of the conservatee.
- (e) The report required by this section shall be confidential and shall be made available only to parties, persons described in subdivision (b), persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have

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discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall limit disclosure of the report exclusively to persons entitled to the report under this section.

(f)

(1) A superior court is not required to perform any duties imposed pursuant to the amendments to this section enacted by Chapter 493 of the Statutes of 2006 until the Legislature makes an appropriation identified for this purpose.

(2) A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by the measure that added this paragraph until the Legislature makes an appropriation identified for this purpose.

SEC. 11. Section 1851.1 of the Probate Code is amended to read:

1851.1.

- (a) When a court issues an order provisionally granting a petition under Section 2002, the investigator appointed under Section 2002 shall promptly commence an investigation under this section.
- (b) In conducting an investigation and preparing a report under this section, the court investigator shall do all of the following:
 - (1) Comply with the requirements of Section 1851.
 - (2) Conduct an interview of the conservator.
 - (3) Conduct an interview of the conservatee's spouse or registered domestic partner, if any.
 - (4) Inform the conservatee of the nature, purpose, and effect of the conservatorship.
 - (5) Inform the conservatee and all other persons entitled to notice under subdivision (b) of Section 2002 of the right to seek termination of the conservatorship.
 - (6) Determine whether the conservatee objects to the conservator or prefers another person to act as conservator.
 - (7) Inform the conservatee of the right to attend the hearing under subdivision (c).
 - (8) Determine whether it appears that the conservatee is unable to attend the hearing and, if able to attend, whether the conservatee is willing to attend the hearing.
 - (9) Inform the conservatee of the right to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if the conservatee is unable to retain legal counsel.

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- (10) Determine whether the conservatee wishes to be represented by legal counsel and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the conservatee wishes to retain.
- (11) If the conservatee has not retained legal counsel, determine whether the conservatee desires the court to appoint legal counsel.
- (12) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee ~~in any case where~~ when the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.
- (13) Consider each of the categories specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1821.
- (14) Consider, to the extent practicable, whether the investigator believes the conservatee suffers from any of the mental function deficits listed in subdivision (a) of Section 811 that significantly impairs the conservatee's ability to understand and appreciate the consequences of the conservatee's actions in connection with any of the functions described in subdivision (a) or (b) of Section 1801 and identify the observations that support that belief.
- (c) The court shall review the conservatorship as provided in Section 2002. The conservatee shall attend the hearing unless the conservatee's attendance is excused under Section 1825. The court may take appropriate action in response to the court investigator's report under this section.
- (d) The court investigator's report under this section shall be confidential as provided in Section 1851.
- (e) Except as provided in paragraph (2) of subdivision (a) of Section 1850, the court shall review the conservatorship again one year after the review conducted pursuant to subdivision (c), and annually thereafter, in the manner specified in Section 1850.
- (f) The first time that the need for a conservatorship is challenged by any interested person or raised on the court's own motion after a transfer under Section 2002, whether in a review pursuant to this section or in a petition to terminate the conservatorship under Chapter 3 (commencing with Section 1860), the court shall presume that there is no need for a conservatorship. This presumption is rebuttable, but can only be overcome by clear and convincing evidence. The court shall make an express finding on whether continuation of the conservatorship is the least restrictive alternative needed for the protection of the conservatee.
- (g)
- (1) If a duty described in this section is the same as a duty imposed pursuant to the amendments to Sections 1826, 1850, 1851, 2250, 2253, and 2620 and the addition of Sections 2250.4 and 2250.6 enacted by Chapter 493 of the Statutes of 2006, and the addition of Section 1051 enacted by

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Chapter 492 of the Statutes of 2006, a superior court shall not be required to perform that duty until the Legislature makes an appropriation identified for this purpose.

- (2) If a duty described in this section is the same as a duty imposed pursuant to the amendments to Sections 1826, 1850, 1851, 2250, 2250.4, 2250.6, 2253, and 2620 enacted by the measure that added this paragraph, a superior court shall not be required to perform that duty until the Legislature makes an appropriation identified for this purpose.

SEC. 12. Section 1851.6 is added to the Probate Code, to read:

1851.6.

- (a) Any interested person, as defined in Section 48 or any person entitled to receive notice pursuant to Section 1822, if they have personal knowledge of a conservatee, may petition the court to investigate an allegation of abuse, as defined by Section 15610.07 of the Welfare and Institutions Code, of the conservatee by a conservator. The court shall investigate all such allegations that establish a prima facie case of abuse. If the court investigator has performed an investigation within the preceding six months and reported the results of that investigation to the court, the court may order, upon good cause shown, that a new investigation is not necessary or that a more limited investigation is sufficient.
- (b) A superior court shall not be required to perform any duties imposed pursuant to this section until the Legislature makes an appropriation identified for this purpose.

SEC. 13. Section 1860 of the Probate Code is amended to read:

1860.

- (a) A conservatorship continues until terminated by the death of the conservatee or by order of the court pursuant to Section 1863, subject to Section 2467 and Article 4 (commencing with Section 2630) of Chapter 7 of Part 4, and except as otherwise provided by law.
- (b) At a hearing under Section 1850 or a hearing on a petition to terminate a conservatorship under Section 1861, the court shall proceed as provided in Section 1863.
- (b)(c) If a conservatorship is established for the person of a married minor, the conservatorship does not terminate automatically if the marriage is dissolved or is adjudged a nullity.
- (c)(d) This section does not apply to limited conservatorships.
- (e) A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by the measure that added this subdivision until the Legislature makes an appropriation identified for this purpose.

SEC. 14. Section 1860.5 of the Probate Code is amended to read:

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1860.5.

- (a) A limited conservatorship continues until the authority of the conservator is terminated by one of the following:
- (1) The death of the limited conservator.
 - (2) The death of the limited conservatee.
 - (3) ~~By~~ An order appointing a conservator of the former limited conservatee.
 - (4) ~~By~~ An order of the court ~~stating that the limited conservatorship is no longer necessary for the limited conservatee and~~ terminating the limited conservatorship.
- (b) A petition for the termination of a limited conservatorship may be filed by any of the following:
- (1) The limited conservator.
 - (2) The limited conservatee.
 - (3) Any relative or friend of the limited conservatee.
- (c) The petition shall state facts showing that the limited conservatorship is no longer required.
- (d) ~~The petition shall be set for hearing and notice thereof~~ Notice of a hearing pursuant to Section 1850.5 or on a petition filed pursuant to this section shall be given to the same persons and in the same manner as provided for a petition for the appointment of a limited conservator ~~in such case, if he or she~~.
- (1) If a petition is filed and the limited conservator is not the petitioner, or has not joined in the petition, the limited conservator shall be served with a notice of the time and place of the hearing accompanied by a copy of the petition at least five days prior to the hearing. ~~Such~~ This service shall be made in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in ~~such other manner as may be~~ another manner authorized by the court. If the limited conservator cannot, with reasonable diligence, be so served with notice, the court may dispense with notice.
 - (2) If the court sets a hearing pursuant to Section 1850.5 to consider termination of a limited conservatorship and no petition is filed, the court shall order the limited conservator to give notice of the hearing as provided in this subdivision and to appear at the hearing and show cause why the limited conservatorship should not be terminated.
- (e)
- (1) The limited conservatee shall be produced at the hearing except in the following cases:
 - (A) When the limited conservatee is out of the state and is not the petitioner.
 - (B) When the limited conservatee is unable to attend the hearing by reason of medical inability.

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- (C) When the court investigator has reported to the court that the limited conservatee has expressly communicated that the limited conservatee (i) is not willing to attend the hearing, (ii) does not wish to contest the continuation of the limited conservatorship, and (iii) does not object to the current limited conservator or prefer that another person act as limited conservator, and the court makes an order that the limited conservatee need not attend the hearing.
- (2) If the limited conservatee is unable to attend the hearing because of medical inability, that inability shall be established by the affidavit or certificate of a licensed medical practitioner or, if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the limited conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the continuation of the limited conservatorship.
- (3) Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of that instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.
- (e)(f) The limited conservator or any relative or friend of the limited conservatee may appear and ~~oppose the petition~~ support or oppose termination of the limited conservatorship. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil actions, including trial by jury if demanded. If ~~it is determined that~~ the court terminates the limited conservatorship ~~is no longer required~~, the limited ~~conservatorship shall cease. If the petition alleges and if it is determined that the limited conservatee is able to properly care for himself or herself and for his or her property, the court shall make such finding and enter judgment accordingly.~~ The limited conservator may, either at the hearing, or thereafter on further notice and hearing, be discharged and ~~his or her~~ the bond exonerated upon the settlement and approval of the final account by the court.
- (g) The court shall order the termination of the limited conservatorship unless the court finds by clear and convincing evidence, that the limited conservatee still meets the criteria for appointment of a limited conservator under Section 1801 and a limited conservatorship remains the least restrictive alternative needed for the limited conservatee's protection.
- (h) If the court determines, by clear and convincing evidence, that the limited conservatee meets the criteria for appointment of a limited conservator under Section 1801, the court shall determine whether to modify the powers granted to the limited conservator to ensure that the limited conservatorship remains the least restrictive alternative needed for the limited conservatee's protection. If the court modifies any powers granted to the limited conservator, new letters shall issue.

SEC. 15. Section 1862 of the Probate Code is amended to read:

1862.

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- (a) Notice of the hearing ~~on the petition~~ to consider the termination of the conservatorship shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.
- (b) If the court sets a hearing pursuant to paragraph (2) of subdivision (a) of Section 1850 and no petition is filed, the court shall order the conservator to give notice of the hearing as provided in subdivision (a), and to appear at the hearing and show cause why the conservatorship should not be terminated.

SEC. 16. Section 1863 of the Probate Code is amended to read:

1863.

- (a) The court shall hear and determine the matter according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded by the conservatee. The conservator, the conservatee, ~~or the spouse,~~ the spouse or domestic partner, or any relative or friend of the conservatee or other interested person may appear and support or oppose the ~~petition~~ termination of the conservatorship.

(b)

(1) The conservatee shall be produced at the hearing except in the following cases:

(A) When the conservatee is out of the state and is not the petitioner.

(B) When the conservatee is unable to attend the hearing by reason of medical inability.

(C) When the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee (i) is not willing to attend the hearing, (ii) does not wish to contest the continuation of the conservatorship, and (iii) does not object to the current conservator or prefer that another person act as conservator, and the court makes an order that the conservatee need not attend the hearing.

(2) If the conservatee is unable to attend the hearing because of medical inability, that inability shall be established by the affidavit or certificate of a licensed medical practitioner or, if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the continuation of the conservatorship.

(3) Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of that instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.

(b)(c) ~~If~~ Unless the court determines ~~that the conservatorship is no longer required or that grounds for establishment of a conservatorship~~, on the record and by clear and convincing evidence, that (1) the conservatee still meets the criteria for appointment of a conservator of the person ~~or estate, or both, no~~

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~~longer exist, the court shall make this finding and shall~~ under subdivision (a) of Section 1801, a conservator of the estate under subdivision (b) of Section 1801, or both; and (2) a conservatorship remains the least restrictive alternative needed for the conservatee's protection, as required by subdivision (b) of Section 1800.3, the court shall enter judgment terminating the conservatorship accordingly.

(d) If the court determines, by clear and convincing evidence, that the conservatee meets the criteria for appointment of a conservator of the person under subdivision (a) of Section 1801, a conservator of the estate under subdivision (b) of Section 1801, or both, the court shall determine whether to modify the existing powers of the conservator to ensure that the conservatorship remains the least restrictive alternative needed for the conservatee's protection and shall order the conservatorship to continue accordingly. If the court modifies the existing powers of the conservator, new letters shall issue.

(c)(e) At the hearing, or thereafter on further notice and hearing, the conservator may be discharged and the bond given by the conservator may be exonerated upon the settlement and approval of the conservator's final account by the court.

(f) This section does not apply to limited conservatorships.

(d)(g) Termination of conservatorship does not preclude a new proceeding for appointment of a conservator on the same or other grounds.

SEC. 17. Section 2112 is added to the Probate Code, to read:

2112.

(a)

(1) In addition to other remedies available under statutory or common law, if the court finds that a conservator who is a professional fiduciary licensed by the Professional Fiduciaries Bureau has abused a conservatee, the conservator shall be liable for a civil penalty of up to ten thousand dollars (\$10,000) for each separate act of abuse, payable to the estate of the conservatee.

(2) In addition to other remedies available under statutory or common law, if the court finds that a conservator who is not a professional fiduciary licensed by the Professional Fiduciaries Bureau has abused a conservatee, the conservator shall be liable for a civil penalty of up to one thousand dollars (\$1,000) for each separate act of abuse, payable to the estate of the conservatee.

(b) If the court finds that a professional fiduciary has abused a conservatee, or if the court imposes a penalty on the professional fiduciary, including, but not limited to, surcharging, punishing for contempt, suspending, or removing the professional fiduciary as a conservator for cause, the court shall report that finding or penalty to the Professional Fiduciaries Bureau. If the court reports an action taken under this section, the court shall provide the bureau, at no charge, with access to the information, including confidential information, regarding its investigation of the professional fiduciary contained in court

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records. The bureau shall maintain the confidentiality of the information, as required by paragraph (4) of subdivision (a) of Section 6580 of the Business and Professions Code or any other applicable state or federal law.

(c) For purposes of this section, the following definitions apply:

(1) "Abused" means that the conservator engaged in an act described in Section 15610.07 of the Welfare and Institutions Code.

(2) "Professional fiduciary" has the same meaning as defined in Section 6501 of the Business and Professions Code.

(d) A superior court shall not be required to perform any duties imposed pursuant to this section until the Legislature makes an appropriation identified for this purpose.

SEC. 18. Section 2250 of the Probate Code is amended to read:

2250.

(a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

(1) A temporary guardian of the person or estate, or both.

(2) A temporary conservator of the person or estate, or both.

(b) The petition shall state facts that establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon that petition or other showing as it may require, may appoint a temporary guardian of the person or estate, or both, or a temporary conservator of the person or estate, or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) If the petitioner, proposed guardian, or proposed conservator is a professional fiduciary, as described in Section 2340, who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the petition for appointment of a temporary guardian or temporary conservator shall include the following:

(1) The petitioner's, proposed guardian's, or proposed conservator's proposed hourly fee schedule or another statement of ~~his or her~~ their proposed compensation from the estate of the proposed ward or proposed conservatee for services performed as a guardian or conservator. The petitioner's, proposed guardian's, or proposed conservator's provision of a proposed hourly fee schedule or another statement of ~~his or her~~ their proposed compensation, as required by this paragraph, shall not preclude a court from later reducing the petitioner's, proposed guardian's, or proposed conservator's fees or other compensation.

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- (2) Unless a petition for appointment of a guardian or conservator that contains the statements required by this paragraph is filed together with a petition for appointment of a temporary guardian or temporary conservator, both of the following:
- (A) A statement of the petitioner's, proposed guardian's, or proposed conservator's registration or license information.
 - (B) A statement explaining who engaged the petitioner, proposed guardian, or proposed conservator or how the petitioner, proposed guardian, or proposed conservator was engaged to file the petition for appointment of a temporary guardian or temporary conservator or to agree to accept the appointment as temporary guardian or temporary conservator and what prior relationship the petitioner, proposed guardian, or proposed conservator had with the proposed ward or proposed conservatee or the proposed ward's or proposed conservatee's family or friends.
- (d) If the petition is filed by a party other than the proposed conservatee, the petition shall include a declaration of due diligence showing both of the following:
- (1) Either the efforts to find the proposed conservatee's relatives named in the petition for appointment of a general conservator or why it was not feasible to contact any of them.
 - (2) Either the preferences of the proposed conservatee concerning the appointment of a temporary conservator and the appointment of the proposed temporary conservator or why it was not feasible to ascertain those preferences.
- (e) Unless the court for good cause otherwise orders, at least five court days before the hearing on the petition, notice of the hearing shall be given as follows:
- (1) Notice of the hearing shall be personally delivered to the proposed ward if ~~he or she~~ the proposed ward is 12 years of age or older, to the parent or parents of the proposed ward, and to any person having a valid visitation order with the proposed ward that was effective at the time of the filing of the petition. Notice of the hearing shall not be delivered to the proposed ward if ~~he or she~~ the proposed ward is under 12 years of age. In a proceeding for temporary guardianship of the person, evidence that a custodial parent has died or become incapacitated, and that the petitioner or proposed guardian is the nominee of the custodial parent, may constitute good cause for the court to order that this notice not be delivered.
 - (2) Notice of the hearing shall be personally delivered to the proposed conservatee, and notice of the hearing shall be delivered pursuant to Section 1215 on the persons required to be named in the petition for appointment of conservator. If the petition states that the petitioner and the proposed conservator have no prior relationship with the proposed conservatee and have not been nominated by a family member, friend, or other person with a relationship to the proposed conservatee, notice of hearing shall be delivered pursuant to Section 1215 on the public guardian of the county in which the petition is filed.

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- (3) A copy of the petition for temporary appointment shall be delivered pursuant to Section 1215 with the notice of hearing.
- (f) If a temporary guardianship is granted ex parte and the hearing on the general guardianship petition is not to be held within 30 days of the granting of the temporary guardianship, the court shall set a hearing within 30 days to reconsider the temporary guardianship. Notice of the hearing for reconsideration of the temporary guardianship shall be provided pursuant to Section 1511, except that the court may for good cause shorten the time for the notice of the hearing.
- (g) Visitation orders with the proposed ward granted before the filing of a petition for temporary guardianship shall remain in effect, unless for good cause the court orders otherwise.
- (h)
- (1) If a temporary conservatorship is granted ex parte, and a petition to terminate the temporary conservatorship is filed more than 15 days before the first hearing on the general petition for appointment of conservator, the court shall set a hearing within 15 days of the filing of the petition for termination of the temporary conservatorship to reconsider the temporary conservatorship. Unless the court otherwise orders, notice of the hearing on the petition to terminate the temporary conservatorship shall be given at least 10 days before the hearing.
- (2) If a petition to terminate the temporary conservatorship is filed within 15 days before the first hearing on the general petition for appointment of a conservator, the court shall set the hearing at the same time that the hearing on the general petition is set. Unless the court otherwise orders, notice of the hearing on the petition to terminate the temporary conservatorship pursuant to this section shall be given at least five court days before the hearing.
- (i) If the court suspends powers of the guardian or conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed.
- (j) If for any reason a vacancy occurs in the office of guardian or conservator, the court, on a petition filed under subdivision (a) or on its own motion, may appoint a temporary guardian or conservator to exercise the powers of the guardian or conservator until a new guardian or conservator is appointed.
- ~~(k) On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes uniform standards for good cause exceptions to the notice required by subdivision (e), limiting those exceptions to only cases when waiver of the notice is essential to protect the proposed conservatee or ward, or the estate of the proposed conservatee or ward, from substantial harm.~~
- (l)(k)** A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by Chapter 493 of the Statutes of 2006 until the Legislature makes an appropriation identified for this purpose.

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SEC. 19. Section 2250.6 of the Probate Code is amended to read:

2250.6.

- (a) Regardless of whether the proposed temporary conservatee attends the hearing, the court investigator shall do all of the following prior to the hearing, unless it is not feasible to do so, in which case the court investigator shall comply with the requirements set forth in subdivision (b):
- (1) Interview the proposed conservatee personally. The court investigator also shall do all of the following:
 - (A) Interview the petitioner and the proposed conservator, if different from the petitioner.
 - (B) To the greatest extent possible, interview the proposed conservatee's spouse or registered domestic partner, relatives within the first degree, neighbors, and, if known, close friends.
 - (C) To the extent possible, interview the proposed conservatee's relatives within the second degree as set forth in subdivision (b) of Section 1821 before the hearing.
 - (2) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the temporary conservatorship, and of the right of the proposed conservatee to oppose the proceeding petition, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.
 - (3) Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing.
 - (4) Determine whether the proposed conservatee wishes to contest or oppose the establishment of the conservatorship.
 - (5) Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.
 - (6) Report to the court, in writing, concerning all of the foregoing.
- (b) If not feasible before the hearing, the court investigator shall do all of the following within two court days after the hearing:
- (1) Interview the conservatee personally. The court investigator also shall do all of the following:
 - (A) Interview the petitioner and the proposed conservator, if different from the petitioner.
 - (B) To the greatest extent possible, interview the proposed conservatee's spouse or registered domestic partner, relatives within the first degree, neighbors, and, if known, close friends.
 - (C) To the extent possible, interview the proposed conservatee's relatives within the second degree as set forth in subdivision (b) of Section 1821.

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- (2) Inform the conservatee of the nature, purpose, and effect of the temporary conservatorship, as well as the right of the conservatee to oppose the ~~proposed general conservatorship~~ petition to appoint a general conservator, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel ~~if the proposed conservatee so chooses~~, and to have legal counsel appointed by the court if unable to retain legal counsel.
- (c) If the investigator does not visit the conservatee until after the hearing at which a temporary conservator was appointed, and the conservatee objects to the appointment of the temporary conservator, or requests an attorney, the court investigator shall report this information promptly, and in no event more than three court days later, to the court. Upon receipt of that information, the court may proceed with appointment of an attorney as provided in Chapter 4 (commencing with Section 1470) of Part 1.
- (d) If it appears to the court investigator that the temporary conservatorship is inappropriate, the court investigator shall immediately, and in no event more than two court days later, provide a written report to the court so the court can consider taking appropriate action on its own motion.
- (e) A superior court shall not be required to perform any duties imposed by this section until the Legislature makes an appropriation identified for this purpose.

SEC. 20. Section 2253 of the Probate Code is amended to read:

2253.

- (a) If a temporary conservator of the person proposes to fix the residence of the conservatee at a place other than that where the conservatee resided ~~prior to~~ before the commencement of the proceedings, that power shall be requested of the court in writing, unless the change of residence is required of the conservatee by a prior court order. The request shall be filed with the petition for temporary conservatorship or, if a temporary conservatorship has already been established, separately. The request shall specify in ~~particular~~ detail the place to which the temporary conservator proposes to move the conservatee, ~~and the precise reasons why it is believed~~ that the petitioner or temporary conservator has concluded that the conservatee will suffer irreparable harm if the change of residence is not permitted, and why no means less restrictive of the conservatee's liberty will suffice to prevent that harm.
- (b) ~~Unless the court for good cause orders otherwise,~~ The court investigator shall do all of the following:
- (1) Interview the conservatee personally.
 - (2) Inform the conservatee of the nature, purpose, and effect of the request made under subdivision (a), and of the right of the conservatee to oppose the request, attend the hearing, be represented by legal counsel ~~if the conservatee so chooses~~, and to have legal counsel appointed by the court if unable to obtain legal counsel.

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- (3) Determine whether the conservatee is unable to attend the hearing because of medical inability and, if able to attend, whether the conservatee is willing to attend the hearing.
- (4) Determine whether the conservatee wishes to oppose the request.
- (5) Determine whether the conservatee wishes to be represented by legal counsel at the hearing and, if so, whether the conservatee has retained legal counsel and, if not, ~~the name of an attorney the proposed conservatee wishes to retain or~~ whether the conservatee plans to retain legal counsel or desires the court to appoint legal counsel.
- (6) If the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court, determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee.
- (7) Determine, by considering, among other things, the medical information received pursuant to paragraph (8), whether the proposed change of place of residence is required to prevent irreparable harm to the conservatee and whether no means less restrictive of the conservatee's liberty will suffice to prevent that harm.
- (8) Gather and review relevant medical reports regarding the proposed conservatee from the proposed conservatee's primary care physician and other relevant mental and physical health care providers.
- (8)(9) Report to the court in writing, at least two days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning representation by legal counsel and whether the conservatee is not willing to attend the hearing and does not wish to oppose the request.
- (c) Within seven days of the date of filing of a temporary conservator's request to remove the conservatee from ~~his or her~~ the conservatee's previous place of residence, the court shall hold a hearing on the request.
- (d) The conservatee shall be present at the hearing except in the following cases:
- (1) Where the conservatee is unable to attend the hearing by reason of medical inability. Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of that instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.
 - (2) Where the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee is not willing to attend the hearing and does not wish to oppose the request, and the court makes an order that the conservatee need not attend the hearing.
- (e) If the conservatee is unable to attend the hearing because of medical inability, that inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and

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is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the establishment of a conservatorship.

- (f) At the hearing, the conservatee has the right to be represented by counsel and the right to confront and cross-examine any witness presented by or on behalf of the temporary conservator and to present evidence on ~~his or her~~ their own behalf.
- (g) The court may approve the request to remove the conservatee from the previous place of residence only if the court finds (1) that change of residence is required to prevent irreparable harm to the conservatee and (2) that no means less restrictive of the conservatee's liberty will suffice to prevent that harm. If an order is made authorizing the temporary conservator to remove the conservatee from the previous place of residence, the order shall specify the specific place wherein the temporary conservator is authorized to place the conservatee. The temporary conservator may not be authorized to remove the conservatee from this state unless it is additionally shown that such removal is required to permit the performance of specified nonpsychiatric medical treatment, consented to by the conservatee, which is essential to the conservatee's physical survival. A temporary conservator who willfully removes a temporary conservatee from this state without authorization of the court is guilty of a felony.
- (h) Subject to subdivision (e) of Section 2252, the court shall also order the temporary conservator to take all reasonable steps to preserve the status quo concerning the conservatee's previous place of residence.

(i)

- (1) The report required by this section shall be confidential and shall be made available only to parties, their attorneys, and the court. The clerk of the court shall limit disclosure of the report exclusively to persons entitled to the report pursuant to this section.
- (2) Notwithstanding paragraph (1), confidential medical information and confidential information from the California Law Enforcement Telecommunications System (CLETS) shall be placed in a separate attachment to the report and shall not be made available to the petitioner or proposed temporary conservator if the request is filed with the petition, the temporary conservatee's spouse or registered domestic partner, and the conservatee's relatives in the first degree or, if there are no such relatives, to the next closest relative.

(i)(j)

- (1) A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by Chapter 493 of the Statutes of 2006 until the Legislature makes an appropriation identified for this purpose.

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- (2) A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by the measure that added this paragraph until the Legislature makes an appropriation identified for this purpose.

SEC. 21. Section 2401 of the Probate Code is amended to read:

2401.

- (a) The guardian or conservator, or limited conservator to the extent specifically and expressly provided in the appointing court's order, has the management and control of the estate and, in managing and controlling the estate, shall use ordinary care and diligence. What constitutes use of ordinary care and diligence is determined by all the circumstances of the particular estate.
- (b) The guardian or conservator:
- (1) Shall exercise a power to the extent that ordinary care and diligence requires that the power be exercised.
- (2) Shall not exercise a power to the extent that ordinary care and diligence requires that the power not be exercised.
- (c) Notwithstanding any other law, a guardian or conservator who is not a trust company, ~~in exercising his or her~~ or an employee of that guardian or conservator, in exercising their powers, may not hire or refer any business to an entity in which ~~he or she has a financial interest except upon authorization of the court. Prior to authorization from the court,~~ the guardian or conservator ~~shall disclose to the court in writing his or her financial interest in the entity~~ or an employee has a financial interest. For the purposes of this subdivision, "financial interest" shall mean (1) an ownership interest in a sole proprietorship, a partnership, or a closely held corporation, or (2) an ownership interest of greater than 1 percent of the outstanding shares in a publicly held corporation, or (3) being an officer or a director of a corporation.
- (d) Subdivision (c) does not prohibit a professional fiduciary appointed as a guardian or conservator from hiring and compensating individuals as employees, with court approval.
- (d)(e)
- (1) Notwithstanding any other law, a guardian or conservator who is a trust company, in exercising its powers may not, except upon authorization of the court, invest in securities of the trust company or an affiliate or subsidiary, or other securities from which the trust company or affiliate or subsidiary receives a financial benefit or in a mutual fund, other than a mutual fund authorized in paragraph (5) of subdivision (a) of Section 2574, registered under the Investment Company Act of 1940 (Subchapter 1 (commencing with Sec. 80a-1) of Chapter 2D of Title 15 of the United States Code), to which the trust company or its affiliate provides services, including, but not limited to, services as an investment adviser, sponsor, distributor, custodian, agent, registrar, administrator, servicer, or manager, and for which the trust company or its affiliate receives compensation.

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(2) ~~Prior to~~ **Before** authorization from the court, the guardian or conservator shall disclose to the court in writing the trust company's financial interest.

SEC. 22. Section 2620 of the Probate Code is amended to read:

2620.

- (a) At the expiration of one year from the time of appointment and thereafter not less frequently than biennially, unless otherwise ordered by the court to be more frequent, the guardian or conservator shall present the accounting of the assets of the estate of the ward or conservatee to the court for settlement and allowance in the manner provided in Chapter 4 (commencing with Section 1060) of Part 1 of Division 3. By January 1, 2008, the Judicial Council, in consultation with the California Judges Association, the California Association of Superior Court Investigators, the California State Association of Public Administrators, Public Guardians, and Public Conservators, the State Bar of California, and the California Society of Certified Public Accountants, shall develop a standard accounting form, a simplified accounting form, and rules for when the simplified accounting form may be used. After January 1, 2008, all accountings submitted pursuant to this section shall be submitted on the Judicial Council form.
- (b) The final court accounting of the guardian or conservator following the death of the ward or conservatee shall include a court accounting for the period that ended on the date of death and a separate accounting for the period subsequent to the date of death.
- (c) Along with each court accounting, the guardian or conservator shall file supporting documents, as provided in this section.
- (1) For purposes of this subdivision, the term "account statement" shall include any original account statement or verified electronic statement from any institution, as defined in Section 2890, or any financial institution, as defined in Section 2892, in which money or other assets of the estate are held or deposited. A court may also accept a computer-generated printout of an original verified electronic statement if the guardian or conservator verifies that the statement was received in electronic form and printed without alteration. A verification shall be executed by the guardian or conservator pursuant to Section 2015.5 of the Code of Civil Procedure.
- (2) The filing shall include all account statements showing the account balance as of the closing date of the accounting period of the court accounting. If the court accounting is the first court accounting of the guardianship or conservatorship, the guardian or conservator shall provide to the court all account statements showing the account balance immediately preceding the date the conservator or guardian was appointed and all account statements showing the account balance as of the closing date of the first court accounting.
- ~~(3) If the guardian or conservator is a private professional or licensed guardian or conservator, the guardian or conservator shall also file all original account statements or verified electronic~~

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~~statements, as described in paragraph (1), showing the balance as of all periods covered by the accounting.~~

- (4)(3) The filing shall include the original closing escrow statement received showing the charges and credits for any sale of real property of the estate.
- (5)(4) If the ward or conservatee is in a residential care facility or a long-term care facility, the filing shall include the original bill statements for the facility.
- (6)(5) This subdivision shall not apply to the public guardian if the money belonging to the estate is pooled with money belonging to other estates pursuant to Section 2940 and Article 3 (commencing with Section 7640) of Chapter 4 of Part 1 of Division 7. Nothing in this section shall affect any other duty or responsibility of the public guardian with regard to managing money belonging to the estate or filing accountings with the court.
- (7)(6) If any document to be filed or lodged with the court under this section contains the ward's or conservatee's social security number or any other personal information regarding the ward or conservatee that would not ordinarily be disclosed in a court accounting, an inventory and appraisal, or other nonconfidential pleadings filed in the action, the account statement or other document shall be attached to a separate affidavit describing the character of the document, captioned "CONFIDENTIAL FINANCIAL STATEMENT" in capital letters. Except as otherwise ordered by the court, the clerk of the court shall keep the document confidential except to the court and subject to disclosure only upon an order of the court. The guardian or conservator may redact the ward's or conservatee's social security number from any document lodged with the court under this section.
- (8)(7) Courts may provide by local rule that the court shall retain all documents lodged with it under this subdivision until the court's determination of the guardian's or conservator's account has become final, at which time the supporting documents shall be returned to the depositing guardian or conservator or delivered to any successor appointed by the court.
- (d) Each accounting is subject to random or discretionary, full or partial review by the court. The review may include consideration of any information necessary to determine the accuracy of the accounting. If the accounting has any material error, the court shall make an express finding as to the severity of the error and what further action is appropriate in response to the error, if any. Among the actions available to the court is immediate suspension of the guardian or conservator without further notice or proceedings and appointment of a temporary guardian or conservator or removal of the guardian or conservator pursuant to Section 2650 and appointment of a temporary guardian or conservator.
- (e) The guardian or conservator shall make available for inspection and copying, upon reasonable notice, to any person designated by the court to verify the accuracy of the accounting, all books and records, including receipts for any expenditures, of the guardianship or conservatorship.

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- (f) A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by Chapter 493 of the Statutes of 2006 until the Legislature makes an appropriation identified for this purpose.

SEC. 23. Section 2623 of the Probate Code is amended to read:

2623.

- (a) Except as provided in subdivision (b) ~~of this section~~, the guardian or conservator shall be allowed all of the following:
- (1) The amount of the reasonable expenses incurred in the exercise of the powers and the performance of the duties of the guardian or conservator (including, but not limited to, the cost of any surety bond furnished, reasonable attorney's fees, and such compensation for services rendered by the guardian or conservator of the person as the court determines is just ~~and reasonable~~, reasonable, and in the best interest of the ward or conservatee).
 - (2) Such compensation for services rendered by the guardian or conservator as the court determines is just ~~and reasonable~~, reasonable, and in the best interest of the ward or conservatee.
 - (3) All reasonable disbursements made before appointment as guardian or conservator.
 - (4) In the case of termination other than by the death of the ward or conservatee, all reasonable disbursements made after the termination of the guardianship or conservatorship ~~but prior to~~, but before the discharge of the guardian or conservator by the court.
 - (5) In the case of termination by the death of the ward or conservatee, all reasonable expenses incurred ~~prior to~~ before the discharge of the guardian or conservator by the court for the custody and conservation of the estate and its delivery to the personal representative of the estate of the deceased ward or conservatee or in making other disposition of the estate as provided for by law.
- (b)
- (1) The guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully defending their fee request petition, opposing a petition, or any other unsuccessful request or action, ~~made by or on behalf of~~ made by, or behalf of, the ward or conservatee, ~~unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee.~~
 - (2) If the court determines, by clear and convincing evidence, that the defense, opposition, or other action described in paragraph (1) was made in good faith, was based upon the best interest of the ward or conservatee, and did not harm the ward or conservatee, the court may reduce the compensation awarded for the costs or fees incurred instead of denying it completely. The court shall state the reasons for its determination in writing or on the record.

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SEC. 24. Section 2640 of the Probate Code is amended to read:

2640.

- (a) At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters or any other period of time as the court for good cause orders, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following:
- (1) The guardian or conservator of the estate for services in the best interest of the ward or conservatee rendered to that time.
 - (2) The guardian or conservator of the person for services in the best interest of the ward or conservatee rendered to that time.
 - (3) The attorney for services in the best interest of the ward or conservatee rendered to that time by the attorney to the guardian or conservator of the person or estate or both.
- (b) Notice of the hearing shall be given for the period and in the manner provided for in Chapter 3 (commencing with Section 1460) of Part 1.
- (c) Upon the hearing, the court shall make an order allowing (1) any compensation requested in the petition the court determines is just and reasonable to the guardian or conservator of the estate for services rendered or to the guardian or conservator of the person for services rendered, or to both, and (2) any compensation requested in the petition the court determines is reasonable to the attorney for services rendered to the guardian or conservator of the person or estate or both. The compensation allowed to the guardian or conservator of the person, the guardian or conservator of the estate, and to the attorney may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall be charged to the estate. Legal services for which the attorney may be compensated include those services rendered by any paralegal performing legal services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.
- (d)
- (1) Notwithstanding subdivision (c), the guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully defending their fee request petition, opposing a petition, or any other unsuccessful request or action, ~~made by or on behalf of, or behalf of, the ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee.~~
 - (2) If the court determines, by clear and convincing evidence, that the defense, opposition, or other action described in paragraph (1) was made in good faith, was based upon the best interest of the

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ward or conservatee, and did not harm the ward or conservatee, the court may reduce the compensation awarded for the costs or fees incurred instead of denying it completely. The court shall state the reasons for its determination in writing or on the record.

- (e) Notwithstanding subdivision (c), the guardian, conservator, or attorney shall not be compensated with any government benefits program moneys unless deemed by the court as necessary to sustain the support and maintenance of the ward or conservatee, but in no event may this exceed the amount permitted by federal laws and regulations.

SEC. 25. Section 2641 of the Probate Code is amended to read:

2641.

- (a) At any time permitted by Section 2640 and upon the notice therein prescribed, the guardian or conservator of the person may petition the court for an order fixing and allowing compensation for services in the best interest of the ward or conservatee rendered to that time.
- (b) Upon the hearing, the court shall make an order allowing any compensation the court determines is just and reasonable to the guardian or conservator of the person for services rendered in the best interest of the ward or conservatee. The compensation allowed to the guardian or conservator of the person may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall thereupon be charged against the estate.
- (c)
- (1) Notwithstanding subdivision (b), the guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully defending their fee request petition, opposing a petition, or any other unsuccessful request or action, ~~made by or on behalf of~~ made by, or behalf of, the ward or conservatee, ~~unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee.~~
 - (2) If the court determines, by clear and convincing evidence, that the defense, opposition, or other action described in paragraph (1) was made in good faith, was based upon the best interest of the ward or conservatee, and did not harm the ward or conservatee, the court may reduce the compensation awarded for the costs or fees incurred instead of denying it completely. The court shall state the reasons for its determination in writing or on the record.
- (d) Notwithstanding subdivision (b), the guardian or conservator of the person shall not be compensated with any government benefits program moneys unless deemed by the court as necessary to sustain the support and maintenance of the ward or conservatee, but in no event may this exceed the amount permitted by federal laws and regulations.

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SEC. 26. Section 2653 of the Probate Code is amended to read:

2653.

- (a) The guardian or conservator, the ward or conservatee, the spouse of the ward or the spouse or registered domestic partner of the conservatee, **anya** relative or friend of the ward or conservatee, and any interested person may appear at the hearing and support or oppose the petition.
- (b) If the court determines that cause for removal of the guardian or conservator exists, the court may remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly and, in the case of a guardianship or conservatorship of the estate, order the guardian or conservator to file an accounting and to surrender the estate to the person legally entitled thereto. If the guardian or conservator fails to file the accounting as ordered, the court may compel the accounting pursuant to Section 2620.2.
- (c) If the court removes the guardian or conservator for cause, as described in subdivisions (a) to (g), inclusive, of Section 2650 or Section 2655, both all of the following shall apply:
- (1) The court shall award the petitioner the costs of the petition and other expenses and costs of litigation, including attorney's fees, incurred under this article, ~~unless the court determines that the guardian or conservator has acted in good faith, based on the best interests of the ward or conservatee.~~
- (2) The guardian or conservator may not deduct from, or charge to, the estate ~~his or her costs of litigation~~ **the guardian's or conservator's costs of opposing the petition for removal**, and is personally liable for those costs and expenses.
- (3) **If the court removes a professional fiduciary as guardian or conservator for cause, the court shall report that determination and the basis for removal to the Professional Fiduciaries Bureau. If the court reports an action taken under this section, the court shall provide the bureau, at no charge, with access to the information, including confidential information, regarding its investigation of the professional fiduciary contained in court records. The bureau shall maintain the confidentiality of the information, as required by paragraph (4) of subdivision (a) of Section 6580 of the Business and Professions Code or any other applicable state or federal law.**
- (d) **A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by the measure that added this subdivision until the Legislature makes an appropriation identified for this purpose.**

History

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Sponsor

Low

CALIFORNIA ADVANCE LEGISLATIVE SERVICE

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