

AMENDED IN SENATE SEPTEMBER 3, 2021

AMENDED IN SENATE AUGUST 26, 2021

AMENDED IN SENATE JULY 6, 2021

AMENDED IN SENATE JUNE 24, 2021

AMENDED IN ASSEMBLY APRIL 28, 2021

AMENDED IN ASSEMBLY APRIL 21, 2021

AMENDED IN ASSEMBLY APRIL 6, 2021

AMENDED IN ASSEMBLY MARCH 29, 2021

AMENDED IN ASSEMBLY MARCH 22, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1194

Introduced by Assembly Member Low

(Principal coauthor: Senator Allen)

(Coauthor: Senator Laird)

February 18, 2021

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.

LEGISLATIVE COUNSEL'S DIGEST

AB 1194, as amended, 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 ~~or 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 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 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~~ *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.

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, ~~2023~~, 2024, regarding specified findings and recommendations on court effectiveness in conservatorship cases.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

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 ~~an oral or written request, provide the 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 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 shall impose sanctions upon a finding that the professional fiduciary did ~~either~~ any of the following:

~~(A) Violated the law or breached a fiduciary duty that caused financial or physical harm or mental suffering.~~

1 (A) *Breached a legal or fiduciary duty to a client and thereby*
2 *caused financial or physical harm or mental suffering to the client.*

3 (B) Abused an elder or a dependent ~~adult~~, *adult client*, as defined
4 in Section 15610.07 of the Welfare and Institutions Code.

5 (C) *Violated a statute or regulation related to this chapter.*

6 (3) Paragraph (2) applies, but is not limited to, all of the
7 following referrals:

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

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

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

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

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

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

28 (4) If a court makes a referral described in paragraph (2), the
29 court shall provide the bureau, at no charge, with access to the
30 information, including confidential information, regarding its
31 investigation of the professional fiduciary that is contained in court
32 records. The bureau shall not disclose any confidential information
33 contained in court records and shall use that information only for
34 purposes of investigating allegations against the professional
35 fiduciary or in a criminal, civil, or administrative proceeding
36 brought by the bureau against the professional fiduciary.
37 Confidential information derived from a court record and filed in
38 a criminal, civil, or administrative proceeding shall be kept in the
39 confidential portion of the court case file. If the bureau does not
40 bring a criminal, civil, or administrative proceeding against the

1 professional fiduciary as a result of the allegation, the bureau shall
2 destroy the records in its possession that contain confidential
3 information as soon as it determined that no further action will be
4 taken regarding the allegations. ~~The This~~ paragraph does not affect
5 the admissibility of confidential information as evidence in a
6 criminal proceeding.

7 (b) Sanctions shall include any of the following:

8 (1) Administrative citations and fines as provided in Section
9 125.9 for a violation of this chapter, the Professional Fiduciaries
10 Code of Ethics, or any regulation adopted under this chapter.

11 (2) License suspension, probation, or revocation.

12 ~~(3) (A) Restitution in the amount of the economic loss suffered~~
13 ~~by a client as the result of the professional fiduciary's violation of~~
14 ~~law, breach of duty, or abuse, as defined in Section 15610.07 of~~
15 ~~the Welfare and Institutions Code, payable directly to the client~~
16 ~~or the client's estate.~~

17 ~~(B) If the professional fiduciary was informed of the right to~~
18 ~~have a formal determination of the amount of restitution and was~~
19 ~~provided with a formal hearing, waived a formal hearing, or~~
20 ~~stipulated to the amount of the restitution ordered, the restitution~~
21 ~~order is deemed a money judgment.~~

22 ~~(C) A restitution order granted pursuant to this paragraph shall~~
23 ~~be fully enforceable by the client to whom restitution was granted~~
24 ~~as if the restitution order were a civil judgment, in the same manner~~
25 ~~as provided for the enforcement of any other money judgment.~~

26 ~~(D) Restitution collected pursuant to an order under this~~
27 ~~paragraph shall be credited against any surcharge levied against~~
28 ~~the professional fiduciary by the probate court or any other~~
29 ~~judgment or order for the same losses rendered against the~~
30 ~~professional fiduciary.~~

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

36 (d) The bureau shall revoke the professional fiduciary's license
37 if it finds that the professional fiduciary did either of the following:

38 ~~(1) Knowingly, intentionally, or willfully violated a legal duty~~
39 ~~to a client, breached a fiduciary duty to a client, or abused an elder~~
40 ~~or dependent adult client.~~

1 (1) *Knowingly, intentionally, or willfully breached a legal or*
2 *fiduciary duty to an elder or dependent adult client that constitutes*
3 *abuse of the client, as defined in Section 15610.07 of the Welfare*
4 *and Institutions Code.*

5 (2) Caused serious physical or financial harm or mental suffering
6 to a client through gross negligence or gross incompetence.

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

8 1051. (a) In the absence of a stipulation to the contrary between
9 parties who have filed pleadings in a proceeding under this code,
10 there shall be no ex parte communications between any party, or
11 attorney for the party, and the court concerning a subject raised in
12 those pleadings, except as permitted or required by law.

13 (b) Notwithstanding subdivision (a), in any case upon which
14 the court has exercised its jurisdiction, the court may refer to the
15 court investigator or take other appropriate action in response to
16 an ex parte communication regarding either or both of the
17 following:

18 (1) A fiduciary, as defined in Section 39, about the fiduciary's
19 performance of their duties and responsibilities.

20 (2) A person who is the subject of a conservatorship or
21 guardianship proceeding under Division 4 (commencing with
22 Section 1400).

23 (c) An action by the court pursuant to subdivision (b) shall be
24 consistent with due process and the requirements of this code. The
25 court shall disclose the ex parte communication to all parties and
26 counsel. The court may, for good cause, dispense with the
27 disclosure if necessary to protect the ward or conservatee from
28 harm.

29 (d) If the court imposes a penalty, including, but not limited to,
30 a surcharge, punishment for contempt, suspension, or removal, on
31 a professional fiduciary, the court shall report that action to the
32 Professional Fiduciaries Bureau. If the court reports an action taken
33 under this section, the court shall provide the bureau, at no charge,
34 with access to the information, including confidential information,
35 regarding its investigation of the professional fiduciary contained
36 in the court records. The bureau shall maintain the confidentiality
37 of the information, as required by paragraph (4) of subdivision (a)
38 of Section 6580 of the Business and Professions Code or any other
39 applicable state or federal law.

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

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

5 1458. (a) On or before January 1, ~~2023~~, 2024, the Judicial
6 Council shall report to the Legislature the findings of a study
7 measuring court effectiveness in conservatorship cases, including
8 the effectiveness of protecting the legal rights and best interests
9 of a conservatee. The report shall include all of the following, with
10 respect to the courts chosen for evaluation pursuant to subdivision

11 (b):

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

15 (A) The number of petitions filed requesting appointment of a
16 conservator, the number of those petitions granted, and the number
17 denied, with cases in which a professional fiduciary was appointed
18 presented separately from cases in which a nonprofessional
19 conservator was appointed.

20 (B) The number of conservatorships under court supervision at
21 the end of the fiscal year in which a court investigation was
22 conducted, with cases in which a professional fiduciary was
23 appointed presented separately from cases in which a
24 nonprofessional conservator was appointed.

25 (C) The number of conservatorships under court supervision at
26 the end of the fiscal year in which a court review hearing was held,
27 with cases in which a professional fiduciary was appointed
28 presented separately from cases in which a nonprofessional
29 conservator was appointed.

30 (D) The number of petitions or objections filed by or on behalf
31 of a conservatee challenging a conservator's action, failure to act,
32 accounting, or compensation; the number of those petitions that
33 were granted; and the number of petitions that were denied, with
34 cases in which a professional fiduciary was appointed presented
35 separately from cases in which a nonprofessional conservator was
36 appointed.

37 (E) The number of conservatorships under court supervision in
38 which accountings due, and the number of accountings received
39 after they were due, or not received at all, with cases in which a

1 professional fiduciary was appointed presented separately from
2 cases in which a nonprofessional conservator was appointed.

3 (F) The number of conservatorships of the estate, or of the
4 person and the estate, under court supervision in which bond was
5 not required of the conservator, with cases in which a professional
6 fiduciary was appointed presented separately from cases in which
7 a nonprofessional conservator was appointed.

8 (2) An analysis of compliance with statutory timeframes in the
9 2018–19 fiscal year.

10 (3) A description of any operational differences between courts
11 that affect the processing of conservatorship cases, including
12 timeframes and steps taken to protect the legal rights and best
13 interests of conservatees.

14 (b) The Judicial Council shall select at least three courts for the
15 evaluation required by this section, including one small court, one
16 medium-sized court, and one large court.

17 (c) The report shall include recommendations for statewide
18 performance measures to be collected, best practices that serve to
19 protect the legal rights of conservatees, and staffing needs to meet
20 case processing requirements.

21 (d) The report shall be submitted pursuant to Section 9795 of
22 the Government Code.

23 ~~(e) This section shall only be implemented to the extent that the~~
24 ~~Legislature makes an appropriation identified for this purpose.~~

25 ~~(f)~~

26 (e) This section shall remain in effect only until January 1, 2026,
27 and as of that date is repealed.

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

29 1460. (a) Subject to Sections 1202 and 1203, if notice of
30 hearing is required under this division but the applicable provision
31 does not fix the manner of giving notice of hearing, the notice of
32 the time and place of the hearing shall be given at least 15 days
33 before the day of the hearing as provided in this section.

34 (b) Subject to subdivision (e), the petitioner, who includes, for
35 purposes of this section, a person filing a petition, report, or
36 account, shall cause the notice of hearing to be delivered pursuant
37 to Section 1215, to each of the following persons:

38 (1) The guardian or conservator.

39 (2) The ward or the conservatee.

1 (3) The spouse of the ward or conservatee, if the ward or
2 conservatee has a spouse, or the domestic partner of the
3 conservatee, if the conservatee has a domestic partner.

4 (4) Any person who has requested special notice of the matter,
5 as provided in Section 2700.

6 (5) For any hearing on a petition to terminate a guardianship,
7 to accept the resignation of a guardian, or to remove a guardian,
8 the persons described in subdivision (c) of Section 1510.

9 (6) For any hearing to consider terminating a conservatorship,
10 to accept the resignation of a conservator, or to remove a
11 conservator, the persons described in subdivision (b) of Section
12 1821.

13 (c) The clerk of the court shall cause the notice of the hearing
14 to be posted as provided in Section 1230 if the posting is required
15 by subdivision (c) of Section 2543.

16 (d) Except as provided in subdivision (e), this section does not
17 excuse compliance with the requirements for notice to a person
18 who has requested special notice pursuant to Chapter 10
19 (commencing with Section 2700) of Part 4.

20 (e) The court, for good cause, may dispense with the notice
21 otherwise required to be given to a person as provided in this
22 section.

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

24 1471. (a) If a conservatee, proposed conservatee, or person
25 alleged to lack legal capacity is unable to retain legal counsel and
26 requests the appointment of counsel to assist in the particular
27 matter, whether or not that person lacks or appears to lack legal
28 capacity, the court shall, at or before the time of the hearing,
29 appoint the public defender or private counsel to represent the
30 person in the following proceedings under this division:

31 (1) A proceeding to establish or transfer a conservatorship or
32 to appoint a proposed conservator.

33 (2) A proceeding to terminate the conservatorship.

34 (3) A proceeding to remove the conservator.

35 (4) A proceeding for a court order affecting the legal capacity
36 of the conservatee.

37 (5) A proceeding to obtain an order authorizing removal of a
38 temporary conservatee from the temporary conservatee's place of
39 residence.

1 (b) If a conservatee or proposed conservatee has not retained
2 legal counsel and does not plan to retain legal counsel, whether or
3 not that person lacks or appears to lack legal capacity, the court
4 shall, at or before the time of the hearing, appoint the public
5 defender or private counsel to represent the person in any
6 proceeding listed in subdivision (a).

7 (c) In any proceeding to establish a limited conservatorship, if
8 the proposed limited conservatee has not retained legal counsel
9 and does not plan to retain legal counsel, the court shall
10 immediately appoint the public defender or private counsel to
11 represent the proposed limited conservatee. The proposed limited
12 conservatee shall pay the cost for that legal service if they are able.
13 This subdivision applies irrespective of any medical or
14 psychological inability to attend the hearing on the part of the
15 proposed limited conservatee as allowed in Section 1825.

16 (d) If a conservatee, proposed conservatee, or person alleged to
17 lack legal capacity expresses a preference for a particular attorney
18 to represent them, the court shall allow representation by the
19 preferred attorney, even if the attorney is not on the court's list of
20 a court-appointed attorneys, and the attorney shall provide zealous
21 representation as provided in subdivision (e). However, an attorney
22 ~~who has a~~ *cannot provide zealous advocacy or who has any* conflict
23 of interest with respect to the representation of the conservatee,
24 proposed conservatee, or person alleged to lack legal capacity shall
25 be disqualified.

26 (e) The role of legal counsel of a conservatee, proposed
27 conservatee, or a person alleged to lack legal capacity is that of a
28 ~~zealous advocate~~, *zealous, independent advocate representing the*
29 *wishes of their client*, consistent with the duties set forth in Section
30 6068 of the Business and Professions Code and the California
31 Rules of Professional Conduct.

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

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

38 1826. (a) Regardless of whether the proposed conservatee
39 attends the hearing, the court investigator shall do all of the
40 following:

1 (1) Conduct the following interviews:

2 (A) The proposed conservatee personally.

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

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

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

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

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

24 (4) Review the allegations of the petition as to why the
25 appointment of the conservator is required and, in making the
26 determination, do the following:

27 (A) Refer to the supplemental information form submitted by
28 the petitioner and consider the facts set forth in the form that
29 address each of the categories specified in paragraphs (1) to (5),
30 inclusive, of subdivision (a) of Section 1821, as well as the medical
31 reports received pursuant to paragraph (11).

32 (B) Determine, to the extent practicable or possible, whether
33 the court investigator believes the proposed conservatee suffers
34 from any of the mental function deficits listed in subdivision (a)
35 of Section 811 that significantly impairs the proposed conservatee's
36 ability to understand and appreciate the consequences of the
37 proposed conservatee's actions in connection with any of the
38 functions described in subdivision (a) or (b) of Section 1801 and
39 describe the observations that support that belief, including

1 information in the medical reports received pursuant to paragraph
2 (11).

3 (5) Determine if the proposed conservatee wishes to oppose the
4 establishment of the conservatorship.

5 (6) Determine if the proposed conservatee objects to the
6 proposed conservator or prefers another person to act as
7 conservator.

8 (7) Determine if the proposed conservatee wishes to be
9 represented by legal counsel and, if so, whether the proposed
10 conservatee has retained legal counsel and, if not, whether the
11 proposed conservatee plans to retain legal counsel.

12 (8) If the proposed conservatee does not plan to retain legal
13 counsel, determine if the proposed conservatee desires the court
14 to appoint legal counsel.

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

20 (10) (A) Determine if the proposed conservatee is incapable of
21 communicating, with or without reasonable accommodations, a
22 desire to participate in the voting process, and may be disqualified
23 from voting pursuant to Section 2208 of the Elections Code.

24 (B) The proposed conservatee shall not be disqualified from
25 voting on the basis that the proposed conservatee does, or would
26 need to do, any of the following to complete an affidavit of voter
27 registration:

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

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

32 (iii) Completes the affidavit of voter registration with the
33 assistance of another person pursuant to subdivision (d) of Section
34 2150 of the Elections Code.

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

37 (11) Gather and review relevant medical reports regarding the
38 proposed conservatee from the proposed conservatee's primary
39 care physician and other relevant mental and physical health care
40 providers.

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

5 (A) Representation by legal counsel.

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

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

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

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

15 (C) The proposed conservatee.

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

20 (E) Any other persons as the court orders.

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

24 (c) (1) The report required by this section is confidential and
25 shall be made available only to parties, persons described in
26 paragraph (13) of subdivision (a), persons given notice of the
27 petition who have requested this report or who have appeared in
28 the proceedings, their attorneys, and the court. The court has
29 discretion at any other time to release the report, if it would serve
30 the interests of the conservatee. The clerk of the court shall provide
31 for the limitation of the report exclusively to persons entitled to
32 its receipt.

33 (2) Notwithstanding paragraph (1), confidential medical
34 information and confidential information from the California Law
35 Enforcement Telecommunications System (CLETS) shall be placed
36 in a separate attachment to the report and shall be made available
37 only to the proposed conservatee and the proposed conservatee's
38 attorney.

39 (d) This section does not apply to a proposed conservatee who
40 has personally executed the petition for conservatorship, or a

1 proposed conservatee who has nominated their own conservator,
2 if the proposed conservatee attends the hearing.

3 (e) If the court investigator has performed an investigation
4 within the preceding six months and furnished a report thereon to
5 the court, the court may order, upon good cause shown, that another
6 investigation is not necessary or that a more limited investigation
7 may be performed.

8 (f) An investigation by the court investigator related to a
9 temporary conservatorship also may be a part of the investigation
10 for the general petition for conservatorship, but the court
11 investigator shall make a second visit to the proposed conservatee
12 and the report required by this section shall include the effect of
13 the temporary conservatorship on the proposed conservatee.

14 (g) The Judicial Council shall, on or before January 1, 2023,
15 update the rules of court and Judicial Council forms as necessary
16 to implement this section.

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

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

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

26 1850. (a) Except as provided in subdivision ~~(b)~~, (e), each
27 conservatorship ~~initiated~~ *established* pursuant to this part shall be
28 reviewed by the court as follows:

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

1 ~~(A) Ordering a review of the conservatorship pursuant to~~
2 ~~subdivision (b):~~

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

5 (2) One year after the *initial* appointment of the conservator
6 and annually ~~thereafter~~, *thereafter, the court investigator shall, as*
7 *provided in Section 1851, visit the conservatee, conduct an*
8 *investigation, and report the findings of the investigation to the*
9 *court. On receipt of the investigator's report, the court shall*
10 *consider terminating the conservatorship at a hearing pursuant*
11 *to Section 1863 and take any other appropriate action.*

12 (b) ~~The~~ At any time, the court may, on its own motion or upon
13 request by any interested person, take appropriate action including,
14 but not limited to, ordering a review of the conservatorship at a
15 noticed ~~hearing~~, *hearing* or ordering the conservator to ~~present~~
16 *submit an accounting of the assets of the estate pursuant to Section*
17 *2620.*

18 ~~(e) At a review pursuant to paragraph (2) of subdivision (a), the~~
19 ~~court shall consider terminating the conservatorship, as provided~~
20 ~~in Section 1863.~~

21 ~~(d)~~

22 (c) Notice of a review ~~or~~ hearing pursuant to this section shall
23 be given to the ~~persons~~ *persons*, for the period and in the manner
24 provided in Chapter 3 (commencing with Section 1460) of Part 1.

25 ~~(e)~~

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

27 (1) A conservatorship for an absentee as defined in Section
28 1403.

29 (2) A conservatorship of the estate for a nonresident of this state
30 where the conservatee is not present in this state.

31 ~~(f) (1) A~~

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

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

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

1 1850.5. (a) Notwithstanding Section 1850, each limited
2 conservatorship for a developmentally disabled adult, as defined
3 in subdivision (d) of Section 1801, shall be reviewed by the court
4 one year after the appointment of the conservator and biennially
5 thereafter.

6 (b) The court may, on its own motion or upon request by any
7 interested person, take appropriate action, including, but not limited
8 to, ordering a review of the limited conservatorship at a noticed
9 hearing, at any time.

10 (c) At any review pursuant to this section, the court shall
11 consider terminating the limited ~~conservatorship~~ *conservatorship*,
12 as provided in Section 1860.5.

13 (d) Notice of a review ~~or~~ hearing pursuant to this section shall
14 be given to the persons, for the ~~period~~, *period* and in the manner
15 provided in subdivision (d) of Section 1860.5.

16 (e) (1) A superior court shall not be required to perform any
17 duties imposed by this section until the Legislature makes an
18 appropriation identified for this purpose.

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

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

24 1851. (a) (1) If court review is required pursuant to Section
25 ~~1850, 1850 or 1850.5~~, the court investigator shall, without prior
26 notice to the conservator except as ordered by the court for
27 necessity or to prevent harm to the conservatee, visit the
28 conservatee. The court investigator shall inform the conservatee
29 personally that the conservatee is under a conservatorship and shall
30 give the name of the conservator to the conservatee. The court
31 investigator shall determine all of the following:

32 (A) If the conservatee wishes the court to terminate the
33 conservatorship.

34 (B) If the conservatee wishes the court to remove the conservator
35 and appoint a successor conservator.

36 (C) If both of the following are ~~still~~ true:

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

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

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

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

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

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

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

26 (III) Completes the affidavit of voter registration with the
27 assistance of another person pursuant to subdivision (d) of Section
28 2150 of the Elections Code.

29 (IV) Completes the affidavit of voter registration with reasonable
30 accommodations.

31 (2) If the court investigator determines that the conservatee still
32 meets the criteria for *appointment of* a conservator under Section
33 1801, the investigator shall determine if the terms of the
34 appointment order should be modified to reduce or expand the
35 conservator's powers and duties to ensure that the conservatorship
36 is the least restrictive alternative needed for the conservatee's
37 ~~protection, as required by subdivision (b) of Section 1800.3.~~
38 *protection.*

39 (3) Upon request of the court investigator, the conservator shall
40 make available to the court investigator during the investigation

1 for inspection and copying all books and records, including receipts
2 and any expenditures, of the conservatorship.

3 (b) (1) The findings of the court investigator, including the
4 facts upon which the findings are based, shall be certified in writing
5 to the court not less than 15 days before the date of review. A copy
6 of the report shall be delivered pursuant to Section 1215 to the
7 conservatee, the conservator, and the attorneys of record for the
8 conservator and conservatee at the same time it is certified to the
9 court. A copy of the report, modified as set forth in paragraph (2),
10 also shall be delivered pursuant to Section 1215 to the
11 conservatee's spouse or registered domestic partner and the
12 conservatee's relatives in the first degree, or, if there are no such
13 relatives, to the next closest relative, unless the court determines
14 that the delivery will harm the conservatee.

15 (2) Confidential medical information and confidential
16 information from the California Law Enforcement
17 Telecommunications System shall be in a separate attachment to
18 the report and shall not be provided in copies sent to the
19 conservatee's spouse or registered domestic partner and the
20 conservatee's relatives in the first degree, or, if there are no such
21 relatives, to the next closest relative.

22 (c) In the case of a limited conservatee, the court investigator
23 shall recommend whether to continue, modify, or terminate the
24 limited conservatorship.

25 (d) The court investigator may personally visit the conservator
26 and any other persons necessary to determine if the conservator is
27 acting in the best interests of the conservatee.

28 (e) The report required by this section shall be confidential and
29 shall be made available only to parties, persons described in
30 subdivision (b), persons given notice of the petition who have
31 requested the report or who have appeared in the proceeding, their
32 attorneys, and the court. The court shall have discretion at any
33 other time to release the report if it would serve the interests of
34 the conservatee. The clerk of the court shall limit disclosure of the
35 report exclusively to persons entitled to the report under this
36 section.

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

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

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

7 1851.1. (a) When a court issues an order provisionally granting
8 a petition under Section 2002, the investigator appointed under
9 Section 2002 shall promptly commence an investigation under this
10 section.

11 (b) In conducting an investigation and preparing a report under
12 this section, the court investigator shall do all of the following:

13 (1) Comply with the requirements of Section 1851.

14 (2) Conduct an interview of the conservator.

15 (3) Conduct an interview of the conservatee's spouse or
16 registered domestic partner, if any.

17 (4) Inform the conservatee of the nature, purpose, and effect of
18 the conservatorship.

19 (5) Inform the conservatee and all other persons entitled to
20 notice under subdivision (b) of Section 2002 of the right to seek
21 termination of the conservatorship.

22 (6) Determine whether the conservatee objects to the conservator
23 or prefers another person to act as conservator.

24 (7) Inform the conservatee of the right to attend the hearing
25 under subdivision (c).

26 (8) Determine whether it appears that the conservatee is unable
27 to attend the hearing and, if able to attend, whether the conservatee
28 is willing to attend the hearing.

29 (9) Inform the conservatee of the right to be represented by legal
30 counsel if the conservatee so chooses, and to have legal counsel
31 appointed by the court if the conservatee is unable to retain legal
32 counsel.

33 (10) Determine whether the conservatee wishes to be represented
34 by legal counsel and, if so, whether the conservatee has retained
35 legal counsel and, if not, the name of an attorney the conservatee
36 wishes to retain.

37 (11) If the conservatee has not retained legal counsel, determine
38 whether the conservatee desires the court to appoint legal counsel.

39 (12) Determine whether the appointment of legal counsel would
40 be helpful to the resolution of the matter or is necessary to protect

1 the interests of the conservatee when the conservatee does not plan
2 to retain legal counsel and has not requested the appointment of
3 legal counsel by the court.

4 (13) Consider each of the categories specified in paragraphs (1)
5 to (5), inclusive, of subdivision (a) of Section 1821.

6 (14) Consider, to the extent practicable, whether the investigator
7 believes the conservatee suffers from any of the mental function
8 deficits listed in subdivision (a) of Section 811 that significantly
9 impairs the conservatee's ability to understand and appreciate the
10 consequences of the conservatee's actions in connection with any
11 of the functions described in subdivision (a) or (b) of Section 1801
12 and identify the observations that support that belief.

13 (c) The court shall review the conservatorship as provided in
14 Section 2002. The conservatee shall attend the hearing unless the
15 conservatee's attendance is excused under Section 1825. The court
16 may take appropriate action in response to the court investigator's
17 report under this section.

18 (d) The court investigator's report under this section shall be
19 confidential as provided in Section 1851.

20 (e) Except as provided in paragraph (2) of subdivision (a) of
21 Section 1850, the court shall review the conservatorship again one
22 year after the review conducted pursuant to subdivision (c), and
23 annually thereafter, in the manner specified in Section 1850.

24 (f) The first time that the need for a conservatorship is
25 challenged by any interested person or raised on the court's own
26 motion after a transfer under Section 2002, whether in a review
27 pursuant to this section or in a petition to terminate the
28 conservatorship under Chapter 3 (commencing with Section 1860),
29 the court shall presume that there is no need for a conservatorship.
30 This presumption is rebuttable, but can only be overcome by clear
31 and convincing evidence. The court shall make an express finding
32 on whether continuation of the conservatorship is the least
33 restrictive alternative needed for the protection of the conservatee.

34 (g) (1) If a duty described in this section is the same as a duty
35 imposed pursuant to the amendments to Sections 1826, 1850, 1851,
36 2250, 2253, and 2620 and the addition of Sections 2250.4 and
37 2250.6 enacted by Chapter 493 of the Statutes of 2006, and the
38 addition of Section 1051 enacted by Chapter 492 of the Statutes
39 of 2006, a superior court shall not be required to perform that duty

1 until the Legislature makes an appropriation identified for this
2 purpose.

3 (2) If a duty described in this section is the same as a duty
4 imposed pursuant to the amendments to Sections 1826, 1850, 1851,
5 2250, 2250.4, 2250.6, 2253, and 2620 enacted by the measure that
6 added this paragraph, a superior court shall not be required to
7 perform that duty until the Legislature makes an appropriation
8 identified for this purpose.

9 SEC. 12. Section 1851.6 is added to the Probate Code, to read:
10 1851.6. (a) Any interested person, as defined in ~~Sections 48~~
11 ~~and 1424~~, *Section 48* or any person entitled to receive notice
12 pursuant to Section 1822, ~~with if they have~~ personal knowledge
13 of a ~~conservatee conservatee~~, may petition the court to investigate
14 an allegation of abuse, as defined by Section 15610.07 of the
15 Welfare and Institutions Code, of the conservatee by a conservator.
16 The court shall investigate all such allegations that establish a
17 prima facie case of abuse. If the court investigator has performed
18 an investigation within the preceding six months and reported the
19 results of that investigation to the court, the court may order, upon
20 good cause shown, that a new investigation is not necessary or
21 that a more limited investigation is sufficient.

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

25 SEC. 13. Section 1860 of the Probate Code is amended to read:
26 1860. (a) A conservatorship continues until terminated by the
27 death of the conservatee or by order of the court pursuant to Section
28 1863, subject to Section 2467 and Article 4 (commencing with
29 Section 2630) of Chapter 7 of Part 4, and except as otherwise
30 provided by law.

31 (b) At a hearing under Section 1850 or a hearing on a petition
32 to terminate a conservatorship under Section 1861, the court shall
33 proceed as provided in Section 1863.

34 (c) If a conservatorship is established for the person of a married
35 minor, the conservatorship does not terminate automatically if the
36 marriage is dissolved or is adjudged a nullity.

37 (d) This section does not apply to limited conservatorships.

38 (e) A superior court shall not be required to perform any duties
39 imposed pursuant to the amendments to this section enacted by

1 the measure that added this subdivision until the Legislature makes
2 an appropriation identified for this purpose.

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

5 1860.5. (a) A limited conservatorship continues until the
6 authority of the conservator is terminated by one of the following:

7 (1) The death of the limited conservator.

8 (2) The death of the limited conservatee.

9 (3) ~~By an~~ An order appointing a conservator of the former
10 limited conservatee.

11 (4) ~~By an~~ An order of the court terminating the limited
12 conservatorship.

13 (b) A petition for the termination of a limited conservatorship
14 may be filed by any of the following:

15 (1) The limited conservator.

16 (2) The limited conservatee.

17 (3) Any relative or friend of the limited conservatee.

18 (c) The petition shall state facts showing that the limited
19 conservatorship is no longer required.

20 (d) Notice of a hearing pursuant to Section 1850.5 or on a
21 petition filed pursuant to this section shall be given to the ~~persons~~
22 *same persons and* in the same manner as provided for a petition
23 for the appointment of a limited conservator. ~~The limited~~
24 ~~conservator in such case, if they are not the petitioner or have not~~
25 ~~joined in the petition;~~

26 *(1) If a petition is filed and the limited conservator is not the*
27 *petitioner, or has not joined in the petition, the limited conservator*
28 *shall be served with a notice of the time and place of the hearing*
29 *accompanied by a copy of the petition at least five days prior to*
30 *the hearing. This service shall be made in the same manner*
31 *provided for in Section 415.10 or 415.30 of the Code of Civil*
32 *Procedure or in another manner authorized by the court. If the*
33 *limited conservator cannot, with reasonable diligence, be so served*
34 *with notice, the court may dispense with notice.*

35 *(2) If the court sets a hearing pursuant to Section 1850.5 to*
36 *consider termination of a limited conservatorship and no petition*
37 *is filed, the court shall order the limited conservator to give notice*
38 *of the hearing as provided in this subdivision and to appear at the*
39 *hearing and show cause why the limited conservatorship should*
40 *not be terminated.*

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

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

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

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

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

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

28 (f) The limited conservator or any relative or friend of the
29 limited conservatee may appear and support or oppose termination
30 of the limited conservatorship. The court shall hear and determine
31 the matter according to the laws and procedures relating to the trial
32 of civil actions, including trial by jury if demanded. ~~The~~ *If the*
33 *court terminates the limited conservatorship, the* limited
34 conservator may, either at the ~~hearing~~, *hearing* or thereafter on
35 further notice and hearing, be discharged and the bond exonerated
36 upon the settlement and approval of the final account by the court.

37 (g) The court shall order the termination of the limited
38 conservatorship unless the court ~~finds, on the record~~ *finds* by clear
39 and convincing evidence, that the limited conservatee still meets
40 the criteria for appointment of a limited conservator under Section

1 1801 and a limited conservatorship remains the least restrictive
2 alternative needed for the limited conservatee's protection.

3 (h) If the court determines, by clear and convincing evidence,
4 that the limited conservatee meets the criteria for appointment of
5 a limited conservator under Section 1801, the court shall determine
6 whether to modify the powers granted to the limited conservator
7 to ensure that the limited conservatorship remains the least
8 restrictive alternative needed for the limited conservatee's
9 protection. If the court modifies any powers granted to the limited
10 conservator, new letters shall issue.

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

12 1862. (a) Notice of the hearing to consider the termination of
13 the conservatorship shall be given for the period and in the manner
14 provided in Chapter 3 (commencing with Section 1460) of Part 1.

15 (b) *If the court sets a hearing pursuant to paragraph (2) of*
16 *subdivision (a) of Section 1850 and no petition is filed, the court*
17 *shall order the conservator to give notice of the hearing as*
18 *provided in subdivision (a), and to appear at the hearing and show*
19 *cause why the conservatorship should not be terminated.*

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

21 1863. (a) The court shall hear and determine the matter
22 according to the law and procedure relating to the trial of civil
23 actions, including trial by jury if demanded by the conservatee.
24 The conservator, the conservatee, the spouse or domestic partner,
25 or any relative or friend of the conservatee or other interested
26 person may appear and support or oppose the termination of the
27 conservatorship.

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

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

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

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

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

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

15 (c) Unless the court determines, on the record and by clear and
16 convincing evidence, that (1) the conservatee still meets the criteria
17 for appointment of a conservator of the person under subdivision
18 (a) of Section 1801, a conservator of the estate under subdivision
19 (b) of Section 1801, or both; and (2) a conservatorship remains
20 the least restrictive alternative needed for the conservatee's
21 protection, as required by subdivision (b) of Section 1800.3, the
22 court shall enter judgment terminating the conservatorship.

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

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

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

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

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

2 2112. (a) (1) In addition to other remedies available under
3 statutory or common law, if the court finds that a conservator who
4 is a professional fiduciary licensed by the Professional Fiduciaries
5 Bureau has abused a conservatee, the conservator shall be liable
6 for a civil penalty of up to ten thousand dollars (\$10,000) for each
7 separate act of abuse, payable to the estate of the conservatee.

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

14 (b) If the court finds that a professional fiduciary has abused a
15 conservatee, or if the court imposes a penalty on the professional
16 fiduciary, including, but not limited to, surcharging, punishing for
17 contempt, suspending, or removing the professional fiduciary *as*
18 *a conservator* for cause, the court shall report that finding or
19 penalty to the Professional Fiduciaries Bureau. If the court reports
20 ~~actions~~ *an action* taken under this section, the court shall provide
21 the bureau, at no charge, with access to the information, including
22 confidential information, regarding its investigation of the
23 professional fiduciary contained in court records. The bureau shall
24 maintain the confidentiality of the information, as required by
25 paragraph (4) of subdivision (a) of Section 6580 of the Business
26 and Professions Code or any other applicable state or federal law.

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

28 (1) “Abused” means that the conservator engaged in an act
29 described in Section 15610.07 of the Welfare and Institutions
30 Code.

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

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

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

37 2250. (a) On or after the filing of a petition for appointment
38 of a guardian or conservator, any person entitled to petition for
39 appointment of the guardian or conservator may file a petition for
40 appointment of:

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

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

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

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

17 (1) The petitioner's, proposed guardian's, or proposed
18 conservator's proposed hourly fee schedule or another statement
19 of their proposed compensation from the estate of the proposed
20 ward or proposed conservatee for services performed as a guardian
21 or conservator. The petitioner's, proposed guardian's, or proposed
22 conservator's provision of a proposed hourly fee schedule or
23 another statement of their proposed compensation, as required by
24 this paragraph, shall not preclude a court from later reducing the
25 petitioner's, proposed guardian's, or proposed conservator's fees
26 or other compensation.

27 (2) Unless a petition for appointment of a guardian or
28 conservator that contains the statements required by this paragraph
29 is filed together with a petition for appointment of a temporary
30 guardian or temporary conservator, both of the following:

31 (A) A statement of the petitioner's, proposed guardian's, or
32 proposed conservator's registration or license information.

33 (B) A statement explaining who engaged the petitioner, proposed
34 guardian, or proposed conservator or how the petitioner, proposed
35 guardian, or proposed conservator was engaged to file the petition
36 for appointment of a temporary guardian or temporary conservator
37 or to agree to accept the appointment as temporary guardian or
38 temporary conservator and what prior relationship the petitioner,
39 proposed guardian, or proposed conservator had with the proposed

1 ward or proposed conservatee or the proposed ward's or proposed
2 conservatee's family or friends.

3 (d) If the petition is filed by a party other than the proposed
4 conservatee, the petition shall include a declaration of due diligence
5 showing both of the following:

6 (1) Either the efforts to find the proposed conservatee's relatives
7 named in the petition for appointment of a general conservator or
8 why it was not feasible to contact any of them.

9 (2) Either the preferences of the proposed conservatee
10 concerning the appointment of a temporary conservator and the
11 appointment of the proposed temporary conservator or why it was
12 not feasible to ascertain those preferences.

13 (e) Unless the court for good cause otherwise orders, at least
14 five court days before the hearing on the petition, notice of the
15 hearing shall be given as follows:

16 (1) Notice of the hearing shall be personally delivered to the
17 proposed ward if the proposed ward is 12 years of age or older, to
18 the parent or parents of the proposed ward, and to any person
19 having a valid visitation order with the proposed ward that was
20 effective at the time of the filing of the petition. Notice of the
21 hearing shall not be delivered to the proposed ward if the proposed
22 ward is under 12 years of age. In a proceeding for temporary
23 guardianship of the person, evidence that a custodial parent has
24 died or become incapacitated, and that the petitioner or proposed
25 guardian is the nominee of the custodial parent, may constitute
26 good cause for the court to order that this notice not be delivered.

27 (2) Notice of the hearing shall be personally delivered to the
28 proposed conservatee, and notice of the hearing shall be delivered
29 pursuant to Section 1215 on the persons required to be named in
30 the petition for appointment of conservator. If the petition states
31 that the petitioner and the proposed conservator have no prior
32 relationship with the proposed conservatee and have not been
33 nominated by a family member, friend, or other person with a
34 relationship to the proposed conservatee, notice of hearing shall
35 be delivered pursuant to Section 1215 on the public guardian of
36 the county in which the petition is filed.

37 (3) A copy of the petition for temporary appointment shall be
38 delivered pursuant to Section 1215 with the notice of hearing.

39 (f) If a temporary guardianship is granted ex parte and the
40 hearing on the general guardianship petition is not to be held within

1 30 days of the granting of the temporary guardianship, the court
2 shall set a hearing within 30 days to reconsider the temporary
3 guardianship. Notice of the hearing for reconsideration of the
4 temporary guardianship shall be provided pursuant to Section
5 1511, except that the court may for good cause shorten the time
6 for the notice of the hearing.

7 (g) Visitation orders with the proposed ward granted before the
8 filing of a petition for temporary guardianship shall remain in
9 effect, unless for good cause the court orders otherwise.

10 (h) (1) If a temporary conservatorship is granted ex parte, and
11 a petition to terminate the temporary conservatorship is filed more
12 than 15 days before the first hearing on the general petition for
13 appointment of conservator, the court shall set a hearing within
14 15 days of the filing of the petition for termination of the temporary
15 conservatorship to reconsider the temporary conservatorship.
16 Unless the court otherwise orders, notice of the hearing on the
17 petition to terminate the temporary conservatorship shall be given
18 at least 10 days before the hearing.

19 (2) If a petition to terminate the temporary conservatorship is
20 filed within 15 days before the first hearing on the general petition
21 for appointment of a conservator, the court shall set the hearing at
22 the same time that the hearing on the general petition is set. Unless
23 the court otherwise orders, notice of the hearing on the petition to
24 terminate the temporary conservatorship pursuant to this section
25 shall be given at least five court days before the hearing.

26 (i) If the court suspends powers of the guardian or conservator
27 under Section 2334 or 2654 or under any other provision of this
28 division, the court may appoint a temporary guardian or conservator
29 to exercise those powers until the powers are restored to the
30 guardian or conservator or a new guardian or conservator is
31 appointed.

32 (j) If for any reason a vacancy occurs in the office of guardian
33 or conservator, the court, on a petition filed under subdivision (a)
34 or on its own motion, may appoint a temporary guardian or
35 conservator to exercise the powers of the guardian or conservator
36 until a new guardian or conservator is appointed.

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

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

3 2250.6. (a) Regardless of whether the proposed temporary
4 conservatee attends the hearing, the court investigator shall do all
5 of the following prior to the hearing, unless it is not feasible to do
6 so, in which case the court investigator shall comply with the
7 requirements set forth in subdivision (b):

8 (1) Interview the proposed conservatee personally. The court
9 investigator also shall do all of the following:

10 (A) Interview the petitioner and the proposed conservator, if
11 different from the petitioner.

12 (B) To the greatest extent possible, interview the proposed
13 conservatee's spouse or registered domestic partner, relatives
14 within the first degree, neighbors, and, if known, close friends.

15 (C) To the extent possible, interview the proposed conservatee's
16 relatives within the second degree as set forth in subdivision (b)
17 of Section 1821 before the hearing.

18 (2) Inform the proposed conservatee of the contents of the
19 citation, of the nature, purpose, and effect of the temporary
20 conservatorship, and of the right of the proposed conservatee to
21 oppose the petition, to attend the hearing, to have the matter of the
22 establishment of the conservatorship tried by jury, to be represented
23 by legal counsel, and to have legal counsel appointed by the court
24 if unable to retain legal counsel.

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

28 (4) Determine whether the proposed conservatee wishes to
29 oppose the establishment of the conservatorship.

30 (5) Determine whether the proposed conservatee objects to the
31 proposed conservator or prefers another person to act as
32 conservator.

33 (6) Report to the court, in writing, concerning all of the
34 foregoing.

35 (b) If not feasible before the hearing, the court investigator shall
36 do all of the following within two court days after the hearing:

37 (1) Interview the conservatee personally. The court investigator
38 also shall do all of the following:

39 (A) Interview the petitioner and the proposed conservator, if
40 different from the petitioner.

1 (B) To the greatest extent possible, interview the proposed
2 conservatee's spouse or registered domestic partner, relatives
3 within the first degree, neighbors, and, if known, close friends.

4 (C) To the extent possible, interview the proposed conservatee's
5 relatives within the second degree as set forth in subdivision (b)
6 of Section 1821.

7 (2) Inform the conservatee of the nature, purpose, and effect of
8 the temporary conservatorship, as well as the right of the
9 conservatee to oppose the petition to appoint a general conservator,
10 to attend the hearing, to have the matter of the establishment of
11 the conservatorship tried by jury, to be represented by legal
12 counsel, and to have legal counsel appointed by the court if unable
13 to retain legal counsel.

14 (c) If the investigator does not visit the conservatee until after
15 the hearing at which a temporary conservator was appointed, and
16 the conservatee objects to the appointment of the temporary
17 conservator, or requests an attorney, the court investigator shall
18 report this information promptly, and in no event more than three
19 court days later, to the court. Upon receipt of that information, the
20 court may proceed with appointment of an attorney as provided
21 in Chapter 4 (commencing with Section 1470) of Part 1.

22 (d) If it appears to the court investigator that the temporary
23 conservatorship is inappropriate, the court investigator shall
24 immediately, and in no event more than two court days later,
25 provide a written report to the court so the court can consider taking
26 appropriate action on its own motion.

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

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

31 2253. (a) If a temporary conservator of the person proposes
32 to fix the residence of the conservatee at a place other than that
33 where the conservatee resided before the commencement of the
34 proceedings, that power shall be requested of the court in writing,
35 unless the change of residence is required of the conservatee by a
36 prior court order. The request shall be filed with the petition for
37 temporary conservatorship or, if a temporary conservatorship has
38 already been established, separately. The request shall specify in
39 detail the place to which the temporary conservator proposes to
40 move the conservatee, the precise reasons that the petitioner or

1 temporary conservator has concluded that the conservatee will
2 suffer irreparable harm if the change of residence is not permitted,
3 and why no means less restrictive of the conservatee's liberty will
4 suffice to prevent that harm.

5 (b) The court investigator shall do all of the following:

6 (1) Interview the conservatee personally.

7 (2) Inform the conservatee of the nature, purpose, and effect of
8 the request made under subdivision (a), and of the right of the
9 conservatee to oppose the request, attend the hearing, be
10 represented by legal counsel, and to have legal counsel appointed
11 by the court if unable to obtain legal counsel.

12 (3) Determine whether the conservatee is unable to attend the
13 hearing because of medical inability and, if able to attend, whether
14 the conservatee is willing to attend the hearing.

15 (4) Determine whether the conservatee wishes to oppose the
16 request.

17 (5) Determine whether the conservatee wishes to be represented
18 by legal counsel at the hearing and, if so, whether the conservatee
19 has retained legal counsel and, if not, whether the conservatee
20 plans to retain legal counsel or desires the court to appoint legal
21 counsel.

22 (6) If the conservatee does not plan to retain legal counsel and
23 has not requested the appointment of legal counsel by the court,
24 determine whether the appointment of legal counsel would be
25 helpful to the resolution of the matter or is necessary to protect the
26 interests of the conservatee.

27 (7) Determine, by considering, among other things, the medical
28 information received pursuant to paragraph (8), whether the
29 proposed change of place of residence is required to prevent
30 irreparable harm to the conservatee and whether no means less
31 restrictive of the conservatee's liberty will suffice to prevent that
32 harm.

33 (8) Gather and review relevant medical reports regarding the
34 proposed conservatee from the proposed conservatee's primary
35 care physician and other relevant mental and physical health care
36 providers.

37 (9) Report to the court in writing, at least two days before the
38 hearing, concerning all of the foregoing, including the
39 conservatee's express communications concerning representation

1 by legal counsel and whether the conservatee is not willing to
2 attend the hearing and does not wish to oppose the request.

3 (c) Within seven days of the date of filing of a temporary
4 conservator's request to remove the conservatee from the
5 conservatee's previous place of residence, the court shall hold a
6 hearing on the request.

7 (d) The conservatee shall be present at the hearing except in the
8 following cases:

9 (1) Where the conservatee is unable to attend the hearing by
10 reason of medical inability. Emotional or psychological instability
11 is not good cause for the absence of the conservatee from the
12 hearing unless, by reason of that instability, attendance at the
13 hearing is likely to cause serious and immediate physiological
14 damage to the conservatee.

15 (2) Where the court investigator has reported to the court that
16 the conservatee has expressly communicated that the conservatee
17 is not willing to attend the hearing and does not wish to oppose
18 the request, and the court makes an order that the conservatee need
19 not attend the hearing.

20 (e) If the conservatee is unable to attend the hearing because of
21 medical inability, that inability shall be established (1) by the
22 affidavit or certificate of a licensed medical practitioner or (2) if
23 the conservatee is an adherent of a religion whose tenets and
24 practices call for reliance on prayer alone for healing and is under
25 treatment by an accredited practitioner of that religion, by the
26 affidavit of the practitioner. The affidavit or certificate is evidence
27 only of the conservatee's inability to attend the hearing and shall
28 not be considered in determining the issue of need for the
29 establishment of a conservatorship.

30 (f) At the hearing, the conservatee has the right to be represented
31 by counsel and the right to confront and cross-examine any witness
32 presented by or on behalf of the temporary conservator and to
33 present evidence on their own behalf.

34 (g) The court may approve the request to remove the conservatee
35 from the previous place of residence only if the court finds (1) that
36 change of residence is required to prevent irreparable harm to the
37 conservatee and (2) that no means less restrictive of the
38 conservatee's liberty will suffice to prevent that harm. If an order
39 is made authorizing the temporary conservator to remove the
40 conservatee from the previous place of residence, the order shall

1 specify the specific place wherein the temporary conservator is
2 authorized to place the conservatee. The temporary conservator
3 may not be authorized to remove the conservatee from this state
4 unless it is additionally shown that such removal is required to
5 permit the performance of specified nonpsychiatric medical
6 treatment, consented to by the conservatee, which is essential to
7 the conservatee's physical survival. A temporary conservator who
8 willfully removes a temporary conservatee from this state without
9 authorization of the court is guilty of a felony.

10 (h) Subject to subdivision (e) of Section 2252, the court shall
11 also order the temporary conservator to take all reasonable steps
12 to preserve the status quo concerning the conservatee's previous
13 place of residence.

14 (i) (1) The report required by this section shall be confidential
15 and shall be made available only to parties, their attorneys, and
16 the court. The clerk of the court shall limit disclosure of the report
17 exclusively to persons entitled to the report pursuant to this section.

18 (2) Notwithstanding paragraph (1), confidential medical
19 information and confidential information from the California Law
20 Enforcement Telecommunications System (CLETS) shall be placed
21 in a separate attachment to the report and shall not be made
22 available to the petitioner or proposed temporary conservator if
23 the request is filed with the petition, the temporary conservatee's
24 spouse or registered domestic partner, and the conservatee's
25 relatives in the first degree or, if there are no such relatives, to the
26 next closest relative.

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

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

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

36 2401. (a) The guardian or conservator, or limited conservator
37 to the extent specifically and expressly provided in the appointing
38 court's order, has the management and control of the estate and,
39 in managing and controlling the estate, shall use ordinary care and

1 diligence. What constitutes use of ordinary care and diligence is
2 determined by all the circumstances of the particular estate.

3 (b) The guardian or conservator:

4 (1) Shall exercise a power to the extent that ordinary care and
5 diligence requires that the power be exercised.

6 (2) Shall not exercise a power to the extent that ordinary care
7 and diligence requires that the power not be exercised.

8 (c) Notwithstanding any other law, a guardian or conservator
9 who is not a trust company, or an employee of that guardian or
10 conservator, in exercising their powers, may not hire or refer any
11 business to an entity in which the guardian or conservator or an
12 employee has a financial interest. For the purposes of this
13 subdivision, “financial interest” shall mean (1) an ownership
14 interest in a sole proprietorship, a partnership, or a closely held
15 corporation, or (2) an ownership interest of greater than 1 percent
16 of the outstanding shares in a publicly held corporation, or (3)
17 being an officer or a director of a corporation.

18 (d) Subdivision (c) does not prohibit a *professional fiduciary*
19 *appointed as a* guardian or conservator from hiring and
20 compensating ~~individual employees to assist the guardian or~~
21 ~~conservator in exercising the guardian or conservator’s powers or~~
22 ~~performing their professional duties.~~ *individuals as employees,*
23 *with court approval.*

24 (e) (1) Notwithstanding any other law, a guardian or conservator
25 who is a trust company, in exercising its powers may not, except
26 upon authorization of the court, invest in securities of the trust
27 company or an affiliate or subsidiary, or other securities from
28 which the trust company or affiliate or subsidiary receives a
29 financial benefit or in a mutual fund, other than a mutual fund
30 authorized in paragraph (5) of subdivision (a) of Section 2574,
31 registered under the Investment Company Act of 1940 (Subchapter
32 1 (commencing with Sec. 80a-1) of Chapter 2D of Title 15 of the
33 United States Code), to which the trust company or its affiliate
34 provides services, including, but not limited to, services as an
35 investment adviser, sponsor, distributor, custodian, agent, registrar,
36 administrator, servicer, or manager, and for which the trust
37 company or its affiliate receives compensation.

38 (2) Before authorization from the court, the guardian or
39 conservator shall disclose to the court in writing the trust
40 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

1 or conservator shall provide to the court all account statements
2 showing the account balance immediately preceding the date the
3 conservator or guardian was appointed and all account statements
4 showing the account balance as of the closing date of the first court
5 accounting.

6 (3) The filing shall include the original closing escrow statement
7 received showing the charges and credits for any sale of real
8 property of the estate.

9 (4) If the ward or conservatee is in a residential care facility or
10 a long-term care facility, the filing shall include the original bill
11 statements for the facility.

12 (5) This subdivision shall not apply to the public guardian if the
13 money belonging to the estate is pooled with money belonging to
14 other estates pursuant to Section 2940 and Article 3 (commencing
15 with Section 7640) of Chapter 4 of Part 1 of Division 7. Nothing
16 in this section shall affect any other duty or responsibility of the
17 public guardian with regard to managing money belonging to the
18 estate or filing accountings with the court.

19 (6) If any document to be filed or lodged with the court under
20 this section contains the ward's or conservatee's social security
21 number or any other personal information regarding the ward or
22 conservatee that would not ordinarily be disclosed in a court
23 accounting, an inventory and appraisal, or other nonconfidential
24 pleadings filed in the action, the account statement or other
25 document shall be attached to a separate affidavit describing the
26 character of the document, captioned "CONFIDENTIAL
27 FINANCIAL STATEMENT" in capital letters. Except as otherwise
28 ordered by the court, the clerk of the court shall keep the document
29 confidential except to the court and subject to disclosure only upon
30 an order of the court. The guardian or conservator may redact the
31 ward's or conservatee's social security number from any document
32 lodged with the court under this section.

33 (7) Courts may provide by local rule that the court shall retain
34 all documents lodged with it under this subdivision until the court's
35 determination of the guardian's or conservator's account has
36 become final, at which time the supporting documents shall be
37 returned to the depositing guardian or conservator or delivered to
38 any successor appointed by the court.

39 (d) Each accounting is subject to random or discretionary, full
40 or partial review by the court. The review may include

1 consideration of any information necessary to determine the
2 accuracy of the accounting. If the accounting has any material
3 error, the court shall make an express finding as to the severity of
4 the error and what further action is appropriate in response to the
5 error, if any. Among the actions available to the court is immediate
6 suspension of the guardian or conservator without further notice
7 or proceedings and appointment of a temporary guardian or
8 conservator or removal of the guardian or conservator pursuant to
9 Section 2650 and appointment of a temporary guardian or
10 conservator.

11 (e) The guardian or conservator shall make available for
12 inspection and copying, upon reasonable notice, to any person
13 designated by the court to verify the accuracy of the accounting,
14 all books and records, including receipts for any expenditures, of
15 the guardianship or conservatorship.

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

20 SEC. 23. Section 2623 of the Probate Code is amended to read:
21 2623. (a) Except as provided in subdivision (b), the guardian
22 or conservator shall be allowed all of the following:

23 (1) The amount of the reasonable expenses incurred in the
24 exercise of the powers and the performance of the duties of the
25 guardian or conservator (including, but not limited to, the cost of
26 any surety bond furnished, reasonable attorney's fees, and such
27 compensation for services rendered by the guardian or conservator
28 of the person as the court determines is just, reasonable, and in the
29 best interest of the ward or conservatee).

30 (2) Such compensation for services rendered by the guardian
31 or conservator as the court determines is just, reasonable, and in
32 the best interest of the ward or conservatee.

33 (3) All reasonable disbursements made before appointment as
34 guardian or conservator.

35 (4) In the case of termination other than by the death of the ward
36 or conservatee, all reasonable disbursements made after the
37 termination of the guardianship or conservatorship, but before the
38 discharge of the guardian or conservator by the court.

39 (5) In the case of termination by the death of the ward or
40 conservatee, all reasonable expenses incurred before the discharge

1 of the guardian or conservator by the court for the custody and
2 conservation of the estate and its delivery to the personal
3 representative of the estate of the deceased ward or conservatee
4 or in making other disposition of the estate as provided for by law.

5 (b) (1) The guardian or conservator shall not be compensated
6 from the estate for any costs or fees that the guardian or conservator
7 incurred in unsuccessfully defending their fee request petition,
8 opposing a petition, or any other unsuccessful request or action
9 made by, or behalf of, the ward or conservatee.

10 (2) If the court determines, by clear and convincing evidence,
11 that the defense, opposition, or other action described in paragraph
12 (1) was made in good faith, was based upon the best interest of
13 the ward or conservatee, and did not harm the ward or conservatee,
14 the court may reduce the compensation awarded for the costs or
15 fees incurred instead of denying it completely. The court shall state
16 the reasons for its determination in writing or on the record.

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

18 2640. (a) At any time after the filing of the inventory and
19 appraisal, but not before the expiration of 90 days from the issuance
20 of letters or any other period of time as the court for good cause
21 orders, the guardian or conservator of the estate may petition the
22 court for an order fixing and allowing compensation to any one or
23 more of the following:

24 (1) The guardian or conservator of the estate for services in the
25 best interest of the ward or conservatee rendered to that time.

26 (2) The guardian or conservator of the person for services in
27 the best interest of the ward or conservatee rendered to that time.

28 (3) The attorney for services in the best interest of the ward or
29 conservatee rendered to that time by the attorney to the guardian
30 or conservator of the person or estate or both.

31 (b) Notice of the hearing shall be given for the period and in
32 the manner provided for in Chapter 3 (commencing with Section
33 1460) of Part 1.

34 (c) Upon the hearing, the court shall make an order allowing
35 (1) any compensation requested in the petition the court determines
36 is just and reasonable to the guardian or conservator of the estate
37 for services rendered or to the guardian or conservator of the person
38 for services rendered, or to both, and (2) any compensation
39 requested in the petition the court determines is reasonable to the
40 attorney for services rendered to the guardian or conservator of

1 the person or estate or both. The compensation allowed to the
2 guardian or conservator of the person, the guardian or conservator
3 of the estate, and to the attorney may, in the discretion of the court,
4 include compensation for services rendered before the date of the
5 order appointing the guardian or conservator. The compensation
6 allowed shall be charged to the estate. Legal services for which
7 the attorney may be compensated include those services rendered
8 by any paralegal performing legal services under the direction and
9 supervision of an attorney. The petition or application for
10 compensation shall set forth the hours spent and services performed
11 by the paralegal.

12 (d) (1) Notwithstanding subdivision (c), the guardian or
13 conservator shall not be compensated from the estate for any costs
14 or fees that the guardian or conservator incurred in unsuccessfully
15 defending their fee request petition, opposing a petition, or any
16 other unsuccessful request or action made by, or behalf of, the
17 ward or conservatee.

18 (2) If the court determines, by clear and convincing evidence,
19 that the defense, opposition, or other action described in paragraph
20 (1) was made in good faith, was based upon the best interest of
21 the ward or conservatee, and did not harm the ward or conservatee,
22 the court may reduce the compensation awarded for the costs or
23 fees incurred instead of denying it completely. The court shall state
24 the reasons for its determination in writing or on the record.

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

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

32 2641. (a) At any time permitted by Section 2640 and upon the
33 notice therein prescribed, the guardian or conservator of the person
34 may petition the court for an order fixing and allowing
35 compensation for services in the best interest of the ward or
36 conservatee rendered to that time.

37 (b) Upon the hearing, the court shall make an order allowing
38 any compensation the court determines is just and reasonable to
39 the guardian or conservator of the person for services rendered in
40 the best interest of the ward or conservatee. The compensation

1 allowed to the guardian or conservator of the person may, in the
2 discretion of the court, include compensation for services rendered
3 before the date of the order appointing the guardian or conservator.
4 The compensation allowed shall thereupon be charged against the
5 estate.

6 (c) (1) Notwithstanding subdivision (b), the guardian or
7 conservator shall not be compensated from the estate for any costs
8 or fees that the guardian or conservator incurred in unsuccessfully
9 defending their fee request petition, opposing a petition, or any
10 other unsuccessful request or action made by, or behalf of, the
11 ward or conservatee.

12 (2) If the court determines, by clear and convincing evidence,
13 that the defense, opposition, or other action described in paragraph
14 (1) was made in good faith, was based upon the best interest of
15 the ward or conservatee, and did not harm the ward or conservatee,
16 the court may reduce the compensation awarded for the costs or
17 fees incurred instead of denying it completely. The court shall state
18 the reasons for its determination in writing or on the record.

19 (d) Notwithstanding subdivision (b), the guardian or conservator
20 of the person shall not be compensated with any government
21 benefits program moneys unless deemed by the court as necessary
22 to sustain the support and maintenance of the ward or conservatee,
23 but in no event may this exceed the amount permitted by federal
24 laws and regulations.

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

26 2653. (a) The guardian or conservator, the ward or conservatee,
27 the spouse of the ward or the spouse or registered domestic partner
28 of the conservatee, a relative or friend of the ward or conservatee,
29 and any interested person may appear at the hearing and support
30 or oppose the petition.

31 (b) If the court determines that cause for removal of the guardian
32 or conservator exists, the court may remove the guardian or
33 conservator, revoke the letters of guardianship or conservatorship,
34 and enter judgment accordingly and, in the case of a guardianship
35 or conservatorship of the estate, order the guardian or conservator
36 to file an accounting and to surrender the estate to the person
37 legally entitled thereto. If the guardian or conservator fails to file
38 the accounting as ordered, the court may compel the accounting
39 pursuant to Section 2620.2.

1 (c) If the court removes the guardian or conservator for cause,
2 as described in subdivisions (a) to (g), inclusive, of Section 2650
3 or Section 2655, all of the following shall apply:

4 (1) The court shall award the petitioner the costs of the petition
5 and other expenses and costs of litigation, including attorney's
6 fees, incurred under this article.

7 (2) The guardian or conservator may not deduct from, or charge
8 to, the estate the guardian's or conservator's costs of opposing the
9 petition for removal, and is personally liable for those costs and
10 expenses.

11 (3) If the court removes a professional fiduciary *as guardian*
12 *or conservator* for cause, the court shall report that determination
13 and the basis for removal to the Professional Fiduciaries Bureau.
14 If the court reports an action taken under this section, the court
15 shall provide the bureau, at no charge, with access to the
16 information, including confidential information, regarding its
17 investigation of the professional fiduciary contained in court
18 records. The bureau shall maintain the confidentiality of the
19 information, as required by paragraph (4) of subdivision (a) of
20 Section 6580 of the Business and Professions Code or any other
21 applicable state or federal law.

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