

Assembly Bill No. 1363

CHAPTER 493

An act to amend Sections 1610, 1822, 1826, 1829, 1830, 1850, 1851, 2215, 2250, 2253, 2320, 2321, 2401, 2610, 2620, 2620.2, 2623, 2640, 2640.1, 2641, 2653, 2701, and 2920 of, to add Sections 1456, 1457, 1850.5, 2113, 2250.2, 2250.4, 2250.6, 2250.8, 2410, and 2923 to, and to add and repeal Section 1458 of, the Probate Code, relating to conservatorship and guardianship.

[Approved by Governor September 27, 2006. Filed with
Secretary of State September 27, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1363, Jones. Omnibus Conservatorship and Guardianship Reform Act of 2006.

(1) Existing law governs the establishment of conservatorships and guardianships.

The bill would require the Judicial Council, among other things, to adopt specified rules of court relating to conservatorships and guardianships and to develop educational programs for nonlicensed conservators and guardians. The bill would also require the Judicial Council to establish qualifications and educational requirements for any court-employed staff attorney, examiner, and investigator or court-appointed attorney, to require educational classes for these attorneys, and probate judges, to report to the Legislature regarding a study measuring court effectiveness in conservatorship cases, and to develop forms to provide notice regarding free assistance provided by the court to conservators and how to file an objection to an inventory and appraisal of the estate. The bill would require public guardians to comply with specified continuing education requirements by January 1, 2008. The bill would revise the notice requirements regarding a petition for the appointment of a temporary guardian or temporary conservator, except as specified. The bill would also require the Judicial Council to adopt a rule of court to implement a specified provision, effective January 1, 2008, requiring guardians and conservators to provide a bond.

(2) Existing law requires conservators and guardians to present a biennial accounting of the assets of the conservatee or ward and requires a biennial review of each conservatorship.

The bill would require a review of conservatorships at a noticed hearing, and impose new requirements governing the accounting. The bill also would prohibit a court from reducing the amount of a bond in conservatorship proceedings without good cause, impose new duties on court investigators and prohibit the compensation of a guardian or

conservator from the estate for costs or fees incurred in unsuccessfully opposing a petition, among other changes. The bill would also specify the circumstances under which a guardian or conservator that is a trust company is required to obtain the authorization of a court prior to exercising its powers.

(3) Existing law authorizes the public guardian to apply for appointment as guardian or conservator of the person, estate, or both, of any person domiciled in the county requiring a guardian or conservator if there is no one else who is qualified and willing to act and whose appointment would be in the best interest of the person. The public guardian is required to apply for appointment if ordered by the court.

This bill additionally would require the public guardian to apply for appointment as guardian or conservator if there is an imminent threat to the person's health or safety or the person's estate. The bill would require the court to order the public guardian to apply for appointment on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person, as specified.

Because the bill would impose new duties and educational requirements on the public guardian, a county officer, the bill would impose a state-mandated local program.

(4) The bill would incorporate additional changes to Sections 1850 and 1851 of the Probate Code proposed by both this bill and SB 1716, to take effect only if both bills are enacted and this bill is enacted last.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(6) The bill would become operative only if SB 1116, SB 1550, and SB 1716 are enacted and become effective on or before January 1, 2007.

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

SECTION 1. This act, together with Senate Bill 1116 (Scott), Senate Bill 1550 (Figueroa), and Senate Bill 1716 (Bowen), shall be known and may be cited as the Omnibus Conservatorship and Guardianship Reform Act of 2006.

SEC. 2. The Legislature finds and declares the following:

(a) The rate of increase in the number of Californians who are 65 years of age or older is surpassing that in other states. The number of people who are 65 years of age will grow from 3.7 million people in the year 2000, to 6.3 million in the year 2020. The fastest growing segment of

California's population, expected to increase by 148 percent between the years 1990 and 2020, is people who are 85 years of age or older. As many as 10 percent of the population over 65 years of age and almost 50 percent of the population over 85 years of age will suffer from Alzheimer's disease.

(b) As the population of California continues to grow and age, an increasing number of persons in the state are unable to provide properly for their personal needs, to manage their financial resources, or to resist fraud or undue influence.

(c) One result of these trends is the growing number of persons acting as conservators on behalf of other persons or their estates. It is estimated that about 500 professional conservators oversee \$1.5 billion in assets. Over 5,000 conservatorship petitions are filed each year in California.

(d) Probate courts oversee the work of conservators, but, in part due to a lack of resources and conflicting priorities, courts often do not provide sufficient oversight in conservatorship cases to ensure that the best interests of conservatees are protected.

(e) Professional fiduciaries are not adequately regulated at present. This lack of regulation can result in the neglect, or the physical or financial abuse, of the clients professional fiduciaries are supposed to serve.

(f) Public guardians do not have adequate resources to represent the best interests of qualifying Californians and, therefore, many in need of the assistance of a conservator go without.

(g) As a result, the conservatorship system in California is fundamentally flawed and in need of reform.

SEC. 3. Section 1456 is added to the Probate Code, to read:

1456. (a) In addition to any other requirements that are part of the judicial branch education program, on or before January 1, 2008, the Judicial Council shall adopt a rule of court that shall do all of the following:

(1) Specifies the qualifications of a court-employed staff attorney, examiner, and investigator, and any attorney appointed pursuant to Sections 1470 and 1471.

(2) Specifies the number of hours of education in classes related to conservatorships or guardianships that a judge who is regularly assigned to hear probate matters shall complete, upon assuming the probate assignment, and then over a three-year period on an ongoing basis.

(3) Specifies the number of hours of education in classes related to conservatorships or guardianships that a court-employed staff attorney, examiner, and investigator, and any attorney appointed pursuant to Sections 1470 and 1471 shall complete each year.

(4) Specifies the particular subject matter that shall be included in the education required each year.

(5) Specifies reporting requirements to ensure compliance with this section.

(b) In formulating the rule required by this section, the Judicial Council shall consult with interested parties, including, but not limited to, the

California Judges Association, the California Association of Superior Court Investigators, the California Public Defenders Association, the County Counsels' Association of California, the State Bar of California, the National Guardianship Association, and the Association of Professional Geriatric Care Managers.

SEC. 4. Section 1457 is added to the Probate Code, to read:

1457. In order to assist relatives and friends who may seek appointment as a nonprofessional conservator or guardian the Judicial Council shall develop a short educational program of no more than three hours that is user-friendly and shall make that program available free of charge to each proposed conservator and guardian and each court-appointed conservator and guardian who is not required to be licensed as a professional conservator or guardian pursuant to Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code. The program may be available by video presentation or Internet access.

SEC. 5. Section 1458 is added to the Probate Code, to read:

1458. (a) On or before January 1, 2008, the Judicial Council shall report to the Legislature the findings of a study measuring court effectiveness in conservatorship cases. The report shall include all of the following with respect to the courts chosen for evaluation:

(1) A summary of caseload statistics, including both temporary and permanent conservatorships, bonds, court investigations, accountings, and use of professional conservators.

(2) An analysis of compliance with statutory timeframes.

(3) A description of any operational differences between courts that affect the processing of conservatorship cases, including timeframes.

(b) The Judicial Council shall select three courts for the evaluation mandated by this section.

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

(d) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 6. Section 1610 of the Probate Code is amended to read:

1610. (a) The Legislature finds and declares that it is in the best interests of children to be raised in a permanent, safe, stable, and loving environment.

(b) Unwarranted petitions, applications, or motions other than discovery motions after the guardianship has been established create an environment that can be harmful to children and are inconsistent with the goals of permanency, safety, and stability.

SEC. 7. Section 1822 of the Probate Code is amended to read:

1822. (a) At least 15 days before the hearing on the petition for appointment of a conservator, notice of the time and place of the hearing

shall be given as provided in this section. The notice shall be accompanied by a copy of the petition. The court may not shorten the time for giving the notice of hearing under this section.

(b) Notice shall be mailed to the following persons:

(1) The spouse, if any, or registered domestic partner, if any, of the proposed conservatee at the address stated in the petition.

(2) The relatives named in the petition at their addresses stated in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If the petition states that the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the Office of the Veterans Administration referred to in Section 1461.5.

(e) If the proposed conservatee is a person with developmental disabilities, at least 30 days before the day of the hearing on the petition, the petitioner shall mail a notice of the hearing and a copy of the petition to the regional center identified in Section 1827.5.

(f) The Judicial Council shall, on or before January 1, 2008, develop a form to effectuate the notice required in subdivision (a).

SEC. 8. Section 1826 of the Probate Code is amended to read:

1826. Regardless of whether the proposed conservatee attends the hearing, the court investigator shall do all of the following:

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

(1) Interview the petitioner and the proposed conservator, if different from the petitioner.

(2) Interview the proposed conservatee's spouse or registered domestic partner and relatives within the first degree.

(3) To the greatest extent possible, interview the proposed conservatee's relatives within the second degree, as set forth in subdivision (b) of Section 1821, neighbors, and, if known, close friends, before the hearing.

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

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

(d) Review the allegations of the petition as to why the appointment of the conservator is required and, in making his or her determination, do the following:

(1) Refer to the supplemental information form submitted by the petitioner and consider the facts set forth in the form that address each of the categories specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1821.

(2) Consider, to the extent practicable, whether he or she believes the proposed conservatee suffers from any of the mental function deficits listed in subdivision (a) of Section 811 that significantly impairs the proposed conservatee's ability to understand and appreciate the consequences of his or her actions in connection with any of the functions described in subdivision (a) or (b) of Section 1801 and identify the observations that support that belief.

(e) Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship.

(f) Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.

(g) Determine whether the proposed conservatee wishes to be represented by legal counsel and, if so, whether the proposed conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain.

(h) Determine whether the proposed conservatee is capable of completing an affidavit of voter registration.

(i) If the proposed conservatee has not retained legal counsel, determine whether the proposed conservatee desires the court to appoint legal counsel.

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

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

(1) Representation by legal counsel.

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

(l) Mail, at least five days before the hearing, a copy of the report referred to in subdivision (k) to all of the following:

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

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

(3) The proposed conservatee.

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

(5) Any other persons as the court orders.

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

(n) The report required by this section is confidential and shall be made available only to parties, persons described in subdivision (l), persons given notice of the petition who have requested this report or who have appeared in the proceedings, their attorneys, and the court. The court has discretion at any other time to release the report, if it would serve the interests of the conservatee. The clerk of the court shall provide for the limitation of the report exclusively to persons entitled to its receipt.

(o) This section does not apply to a proposed conservatee who has personally executed the petition for conservatorship, or one who has nominated his or her own conservator, if he or she attends the hearing.

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

(q) Any investigation by the court investigator related to a temporary conservatorship also may be a part of the investigation for the general petition for conservatorship, but the court investigator shall make a second visit to the proposed conservatee and the report required by this section shall include the effect of the temporary conservatorship on the proposed conservatee.

SEC. 9. Section 1829 of the Probate Code is amended to read:

1829. Any of the following persons may appear at the hearing to support or oppose the petition:

(a) The proposed conservatee.

(b) The spouse or registered domestic partner of the proposed conservatee.

(c) A relative of the proposed conservatee.

(d) Any interested person or friend of the proposed conservatee.

SEC. 10. Section 1830 of the Probate Code is amended to read:

1830. (a) The order appointing the conservator shall contain, among other things, the names, addresses, and telephone numbers of:

(1) The conservator.

(2) The conservatee's attorney, if any.

(3) The court investigator, if any.

(b) In the case of a limited conservator for a developmentally disabled adult, any order the court may make shall include the findings of the court specified in Section 1828.5. The order shall specify the powers granted to and duties imposed upon the limited conservator, which powers and duties may not exceed the powers and duties applicable to a conservator under this code. The order shall also specify the following:

(1) The properties of the limited conservatee to which the limited conservator is entitled to possession and management, giving a description of the properties that will be sufficient to identify them.

(2) The debts, rentals, wages, or other claims due to the limited conservatee which the limited conservator is entitled to collect, or file suit with respect to, if necessary, and thereafter to possess and manage.

(3) The contractual or other obligations which the limited conservator may incur on behalf of the limited conservatee.

(4) The claims against the limited conservatee which the limited conservator may pay, compromise, or defend, if necessary.

(5) Any other powers, limitations, or duties with respect to the care of the limited conservatee or the management of the property specified in this subdivision by the limited conservator which the court shall specifically and expressly grant.

(c) An information notice of the rights of conservatees shall be attached to the order. The conservator shall mail the order and the attached information notice to the conservatee and the conservatee's relatives, as set forth in subdivision (b) of Section 1821. By January 1, 2008, the Judicial Council shall develop the notice required by this subdivision.

SEC. 11. Section 1850 of the Probate Code is amended to read:

1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court as follows:

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

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

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

(2) One year after the appointment of the conservator and annually thereafter. However, at the review that occurs one year after the appointment of the conservator, and every subsequent review conducted pursuant to this paragraph, the court may set the next review in two years if the court determines that the conservator is acting in the best interests of the conservatee. In these cases, the court shall require the investigator to conduct an investigation pursuant to subdivision (a) of Section 1851 one year before the next review and file a status report in the conservatee's court file regarding whether the conservatorship still appears to be warranted and whether the conservator is acting in the best interests of the conservatee. If the investigator determines pursuant to this investigation that the conservatorship still appears to be warranted and that the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental

treatment, and finances, no hearing or court action in response to the investigator's report is required.

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

(c) Notice of a hearing pursuant to subdivision (b) shall be provided to all persons listed in subdivision (b) of Section 1822.

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

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

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

SEC. 11.5. Section 1850 of the Probate Code is amended to read:

1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court as follows:

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

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

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

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

(b) The court may, on its own motion or upon request by any interested person, take appropriate action including, but not limited to, ordering a

review of the conservatorship, including at a noticed hearing, and ordering the conservator to present an accounting of the assets of the estate pursuant to Section 2620.

(c) Notice of a hearing pursuant to subdivision (b) shall be provided to all persons listed in subdivision (b) of Section 1822.

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

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

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

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

SEC. 11.7. Section 1850.5 is added to the Probate Code, to read:

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

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

SEC. 12. Section 1851 of the Probate Code is amended to read:

1851. (a) When court review is required, the court investigator shall, without prior notice to the conservator except as ordered by the court for necessity or to prevent harm to the conservatee, visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. In determining whether the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include an examination of the conservatee's placement, quality of care, including physical and mental treatment, and the conservatee's finances. To the greatest extent possible, the court investigator shall interview individuals set forth in subdivision (a) of Section 1826, in order to determine if the conservator is acting in the best interests of the conservatee. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked. Upon request of the court investigator, the conservator shall make available to the court investigator during the investigation for inspection and copying all books and records, including receipts and any expenditures, of the conservatorship.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court. A copy of the report also shall be mailed to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and, if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee.

(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

(d) The court investigator may personally visit the conservator and other persons as may be necessary to determine whether the present conservator is acting in the best interests of the conservatee.

(e) The report required by this section shall be confidential and shall be made available only to parties, persons described in subdivision (b), persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

SEC. 12.5. Section 1851 of the Probate Code is amended to read:

1851. (a) When court review is required pursuant to Section 1850, the court investigator shall, without prior notice to the conservator except as ordered by the court for necessity or to prevent harm to the conservatee, visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. In determining whether the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include an examination of the conservatee's placement, the quality of care, including physical and mental treatment, and the conservatee's finances. To the greatest extent possible, the court investigator shall interview individuals set forth in subdivision (a) of Section 1826, in order to determine if the conservator is acting in the best interests of the conservatee. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked. Upon request of the court investigator, the conservator shall make available to the court investigator during the investigation for inspection and copying all books

and records, including receipts and any expenditures, of the conservatorship.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court. A copy of the report also shall be mailed to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee.

(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

(d) The court investigator may personally visit the conservator and other persons as may be necessary to determine whether the present conservator is acting in the best interests of the conservatee.

(e) The report required by this section shall be confidential and shall be made available only to parties, persons described in subdivision (b), persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

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

SEC. 13. Section 2113 is added to the Probate Code, to read:

2113. A conservator shall accommodate the desires of the conservatee, except to the extent that doing so would violate the conservator's fiduciary duties to the conservatee or impose an unreasonable expense on the conservatorship estate.

SEC. 14. Section 2215 of the Probate Code is amended to read:

2215. (a) Any of the following persons may appear at the hearing to support or oppose the petition and may file written objections to the petition:

- (1) Any person required to be listed in the petition.
- (2) Any creditor of the ward or conservatee or of the estate.
- (3) Any other interested person.

(b) (1) If the court determines that the transfer requested in the petition will be for the best interests of the ward or conservatee, it shall make an order transferring the proceeding to the other county.

(2) In those cases in which the court has approved a change of residence of the conservatee, it shall be presumed to be in the best interests of the conservatee to transfer the proceedings if the ward or conservatee has moved his or her residence to another county within the state in which any person set forth in subdivision (b) of Section 1821 also resides. The

presumption that the transfer is in the best interests of the ward or conservatee, may be rebutted by clear and convincing evidence that the transfer will harm the ward or conservatee.

SEC. 15. Section 2250 of the Probate Code is amended to read:

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

- (1) A temporary guardian of the person or estate or both.
- (2) A temporary conservator of the person or estate or both.

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

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

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

(2) Notice of the hearing shall be personally delivered to the proposed conservatee, and notice of the hearing shall be served on the persons required to be named in the petition for appointment of conservator.

(3) A copy of the petition for temporary appointment shall be served with the notice of hearing.

(d) If a temporary guardianship is granted ex parte and the hearing on the general guardianship petition is not to be held within 30 days of the granting of the temporary guardianship, the court shall set a hearing within 30 days to reconsider the temporary guardianship. Notice of the hearing for reconsideration of the temporary guardianship shall be provided pursuant to Section 1511, except that the court may for good cause shorten the time for the notice of the hearing.

(e) Visitation orders with the proposed ward granted prior to the filing of a petition for temporary guardianship shall remain in effect, unless for good cause the court orders otherwise.

(f) If a temporary conservatorship is granted ex parte, and a petition to terminate the temporary conservatorship is filed more than 15 days before the first hearing on the general petition for appointment of conservator, the

court shall set a hearing within 15 days of the filing of the petition for termination of the temporary conservatorship to reconsider the temporary conservatorship. Unless the court otherwise orders, notice of the hearing on the petition to terminate the temporary conservatorship shall be given at least 10 days prior to the hearing. If a petition to terminate the temporary conservatorship is filed within 15 days before the first hearing on the general petition for appointment of conservator, the court shall set the hearing at the same time that the hearing on the general petition is set.

(g) The appointment of a guardian or conservator and the appointment of a temporary guardian or conservator may be requested in a single petition or by separate petitions. If the appointment of both a guardian or conservator and also a temporary guardian or conservator is requested in a single petition, the court may not appoint a guardian or conservator without the investigations and reviews otherwise required.

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

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

(j) On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes uniform standards for good cause exceptions to the notice required by subdivision (c), limiting those exceptions to only cases when waiver of the notice is essential to protect the proposed conservatee or ward, or the estate of the proposed conservatee or ward, from substantial harm.

SEC. 15.5. Section 2250.2 is added to the Probate Code, to read:

2250.2. (a) On or after the filing of a petition for appointment of a conservator, any person entitled to petition for appointment of the conservator may file a petition for appointment of a temporary conservator of the person or estate or both.

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

(c) Unless the court for good cause otherwise orders, not less than five days before the appointment of the temporary conservator, notice of the proposed appointment shall be personally delivered to the proposed conservatee.

(d) One petition may request the appointment of a conservator and also the appointment of a temporary conservator or these appointments may be requested in separate petitions.

(e) If the court suspends powers of the conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary conservator to exercise those powers until the powers are restored to the conservator or a new conservator is appointed.

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

(g) This section shall only apply to proceedings under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code.

SEC. 16. Section 2250.4 is added to the Probate Code, to read:

2250.4. The proposed temporary conservatee shall attend the hearing except in the following cases:

(a) If the proposed temporary conservatee is out of the state when served and is not the petitioner.

(b) If the proposed temporary conservatee is unable to attend the hearing by reason of medical inability.

(c) If the court investigator has visited the proposed conservatee prior to the hearing and the court investigator has reported to the court that the proposed temporary conservatee has expressly communicated that all of the following apply:

(1) The proposed conservatee is not willing to attend the hearing.

(2) The proposed conservatee does not wish to contest the establishment of the temporary conservatorship.

(3) The proposed conservatee does not object to the proposed temporary conservator or prefer that another person act as temporary conservator.

(d) If the court determines that the proposed conservatee is unable or unwilling to attend the hearing, and holding the hearing in the absence of the proposed conservatee is necessary to protect the conservatee from substantial harm.

SEC. 17. Section 2250.6 is added to the Probate Code, to read:

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

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

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

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

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

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

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

(4) Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship.

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

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

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

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

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

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

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

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

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

(d) If it appears to the court investigator that the temporary conservatorship is inappropriate, the court investigator shall immediately,

and in no event more than two court days later, provide a written report to the court so the court can consider taking appropriate action on its own motion.

SEC. 17.5. Section 2250.8 is added to the Probate Code, to read:

2250.8. Sections 2250, 2250.4, and 2250.6 shall not apply to proceedings under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code.

SEC. 18. Section 2253 of the Probate Code is amended to read:

2253. (a) If a temporary conservator of the person proposes to fix the residence of the conservatee at a place other than that where the conservatee resided prior to the commencement of the proceedings, that power shall be requested of the court in writing, unless the change of residence is required of the conservatee by a prior court order. The request shall be filed with the petition for temporary conservatorship or, if a temporary conservatorship has already been established, separately. The request shall specify in particular the place to which the temporary conservator proposes to move the conservatee, and the precise reasons why it is believed that the conservatee will suffer irreparable harm if the change of residence is not permitted, and why no means less restrictive of the conservatee's liberty will suffice to prevent that harm.

(b) Unless the court for good cause orders otherwise, the court investigator shall do all of the following:

(1) Interview the conservatee personally.

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

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

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

(5) Determine whether the conservatee wishes to be represented by legal counsel at the hearing and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain or whether the conservatee desires the court to appoint legal counsel.

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

(7) Determine whether the proposed change of place of residence is required to prevent irreparable harm to the conservatee and whether no means less restrictive of the conservatee's liberty will suffice to prevent that harm.

(8) Report to the court in writing, at least two days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning representation by legal counsel and whether the conservatee is not willing to attend the hearing and does not wish to oppose the request.

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

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

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

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

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

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

(g) The court may approve the request to remove the conservatee from the previous place of residence only if the court finds (1) that change of residence is required to prevent irreparable harm to the conservatee and (2) that no means less restrictive of the conservatee's liberty will suffice to prevent that harm. If an order is made authorizing the temporary conservator to remove the conservatee from the previous place of residence, the order shall specify the specific place wherein the temporary conservator is authorized to place the conservatee. The temporary conservator may not be authorized to remove the conservatee from this state unless it is additionally shown that such removal is required to permit the performance of specified nonpsychiatric medical treatment, consented to by the conservatee, which is essential to the conservatee's physical survival. A temporary conservator who willfully removes a temporary conservatee from this state without authorization of the court is guilty of a felony.

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

SEC. 19. Section 2320 of the Probate Code is amended to read:

2320. (a) Except as otherwise provided by statute, every person appointed as guardian or conservator shall, before letters are issued, give a bond approved by the court.

(b) The bond shall be for the benefit of the ward or conservatee and all persons interested in the guardianship or conservatorship estate and shall be conditioned upon the faithful execution of the duties of the office, according to law, by the guardian or conservator.

(c) Except as otherwise provided by statute, unless the court increases or decreases the amount upon a showing of good cause, the amount of a bond given by an admitted surety insurer shall be the sum of all of the following:

(1) The value of the personal property of the estate.

(2) The probable annual gross income of all of the property of the estate.

(3) The sum of the probable annual gross payments from the following:

(A) Part 3 (commencing with Section 11000) of, Part 4 (commencing with Section 16000) of, or Part 5 (commencing with Section 17000) of, Division 9 of the Welfare and Institutions Code.

(B) Subchapter II (commencing with Section 401) of, or Part A of Subchapter XVI (commencing with Section 1382) of, Chapter 7 of Title 42 of the United States Code.

(C) Any other public entitlements of the ward or conservatee.

(4) On or after January 1, 2008, a reasonable amount for the cost of recovery to collect on the bond, including attorney's fees and costs. The Judicial Council shall, on or before January 1, 2008, adopt a rule of court to implement this paragraph.

(d) If the bond is given by personal sureties, the amount of the bond shall be twice the amount required for a bond given by an admitted surety insurer.

(e) The Bond and Undertaking Law (Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure) applies to a bond given under this article, except to the extent inconsistent with this article.

SEC. 20. Section 2321 of the Probate Code is amended to read:

2321. (a) Notwithstanding any other provision of law, the court in a conservatorship proceeding may not waive the filing of a bond or reduce the amount of bond required, without a good cause determination by the court which shall include a determination by the court that the conservatee will not suffer harm as a result of the waiver or reduction of the bond. Good cause may not be established merely by the conservator having filed a bond in another or prior proceeding.

(b) In a conservatorship proceeding, where the conservatee, having sufficient capacity to do so, has waived the filing of a bond, the court in its

discretion may permit the filing of a bond in an amount less than would otherwise be required under Section 2320.

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

2401. (a) The guardian or conservator, or limited conservator to the extent specifically and expressly provided in the appointing court's order, has the management and control of the estate and, in managing and controlling the estate, shall use ordinary care and diligence. What constitutes use of ordinary care and diligence is determined by all the circumstances of the particular estate.

(b) The guardian or conservator:

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

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

(c) Notwithstanding any other law, a guardian or conservator who is not a trust company, in exercising his or her powers, may not hire or refer any business to an entity in which he or she has a financial interest except upon authorization of the court. Prior to authorization from the court, the guardian or conservator shall disclose to the court in writing his or her financial interest in the entity. For the purposes of this subdivision, "financial interest" shall mean (1) an ownership interest in a sole proprietorship, a partnership, or a closely held corporation, or (2) an ownership interest of greater than 1 percent of the outstanding shares in a publicly held corporation, or (3) being an officer or a director of a corporation.

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

Prior to authorization from the court, the guardian or conservator shall disclose to the court in writing the trust company's financial interest.

SEC. 22. Section 2410 is added to the Probate Code, to read:

2410. On or before 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, the National Guardianship Association, and the Association of Professional Geriatric Care Managers, shall adopt a rule of court that shall require uniform standards of conduct

for actions that conservators and guardians may take under this chapter on behalf of conservatees and wards to ensure that the estate of conservatees or wards are maintained and conserved as appropriate and to prevent risk of loss or harm to the conservatees or wards. This rule shall include at a minimum standards for determining the fees that may be charged to conservatees or wards and standards for asset management.

SEC. 23. Section 2610 of the Probate Code is amended to read:

2610. (a) Within 90 days after appointment, or within any further time as the court for reasonable cause upon ex parte petition of the guardian or conservator may allow, the guardian or conservator shall file with the clerk of the court and mail to the conservatee and to the attorneys of record for the ward or conservatee, along with notice of how to file an objection, an inventory and appraisal of the estate, made as of the date of the appointment of the guardian or conservator. A copy of this inventory and appraisal, along with notice of how to file an objection, also shall be mailed to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and, if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee.

(b) The guardian or conservator shall take and subscribe to an oath that the inventory contains a true statement of all of the estate of the ward or conservatee of which the guardian or conservator has possession or knowledge. The oath shall be endorsed upon or annexed to the inventory.

(c) The property described in the inventory shall be appraised in the manner provided for the inventory and appraisal of estates of decedents. The guardian or conservator may appraise the assets that a personal representative could appraise under Section 8901.

(d) If a conservatorship is initiated pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), and no sale of the estate will occur:

(1) The inventory and appraisal required by subdivision (a) shall be filed within 90 days after appointment of the conservator.

(2) The property described in the inventory may be appraised by the conservator and need not be appraised by a probate referee.

(e) By January 1, 2008, the Judicial Council shall develop a form to effectuate the notice required in subdivision (a).

SEC. 24. 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 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.

(2) The filing shall include all account statements showing the balance as of the close of the accounting period of the court accounting. If the court accounting is the first court accounting of the guardianship or conservatorship, the guardian or conservator shall provide to the court all account statements showing the account balance immediately preceding the date the conservator or guardian was appointed and all account statements showing the account through the closing date of the first court accounting.

(3) If the guardian or conservator is a private professional or licensed guardian or conservator, the guardian or conservator shall also file all original account statements, as described above, showing the balance as of all periods covered by the accounting. However, courts may instead provide by local rule that the court shall retain all documents lodged with it under this subdivision until the court’s determination of the guardian’s or conservator’s account has become final, at which time the documents shall be returned to the depositing guardian or conservator or delivered to any successor appointed by the court.

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

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

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

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

(d) Each accounting is subject to random or discretionary, full or partial review by the court. The review may include consideration of any information necessary to determine the accuracy of the accounting. If the accounting has any material error, the court shall make an express finding as to the severity of the error and what further action is appropriate in response to the error, if any. Among the actions available to the court is immediate suspension of the guardian or conservator without further notice or proceedings and appointment of a temporary guardian or conservator or removal of the guardian or conservator pursuant to Section 2650 and appointment of a temporary guardian or conservator.

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

SEC. 25. Section 2620.2 of the Probate Code is amended to read:

2620.2. (a) Whenever the conservator or guardian has failed to file an accounting as required by Section 2620, the court shall require that written notice be given to the conservator or guardian and the attorney of record for the conservatorship or guardianship directing the conservator or guardian to file an accounting and to set the accounting for hearing before the court within 30 days of the date of the notice or, if the conservator or guardian is a public agency, within 45 days of the date of the notice. The court may, upon cause shown, grant an additional 30 days to file the accounting.

(b) Failure to file the accounting within the time specified under subdivision (a), or within 45 days of actual receipt of the notice, whichever is later, shall constitute a contempt of the authority of the court as described in Section 1209 of the Code of Civil Procedure.

(c) If the conservator or guardian does not file an accounting with all appropriate supporting documentation and set the accounting for hearing as required by Section 2620, the court shall do one or more of the following and shall report that action to the board established pursuant to Section 6510 of the Business and Professions Code:

(1) Remove the conservator or guardian as provided under Article 1 (commencing with Section 2650) of Chapter 9 of Part 4 of Division 4.

(2) Issue and serve a citation requiring a guardian or conservator who does not file a required accounting to appear and show cause why the guardian or conservator should not be punished for contempt. If the guardian or conservator purposely evades personal service of the citation, the guardian or conservator shall be immediately removed from office.

(3) Suspend the powers of the conservator or guardian and appoint a temporary conservator or guardian, who shall take possession of the assets of the conservatorship or guardianship, investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interests of the ward or conservatee. Compensation for the temporary conservator or guardian, and counsel for the temporary conservator or guardian, shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of condition of the bond.

(4) (A) Appoint legal counsel to represent the ward or conservatee if the court has not suspended the powers of the conservator or guardian and appoint a temporary conservator or guardian pursuant to paragraph (3). Compensation for the counsel appointed for the ward or conservatee shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of a condition on the bond, unless for good cause shown the court finds that counsel for the ward or conservatee shall be compensated according to Section 1470. The court shall order the legal counsel to do one or more of the following:

(i) Investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interests of the ward or conservatee.

(ii) Recommend to the court whether the conservator or guardian should be removed.

(iii) Recommend to the court whether money or other property in the estate should be deposited pursuant to Section 2453, 2453.5, 2454, or 2455, to be subject to withdrawal only upon authorization of the court.

(B) After resolution of the matters for which legal counsel was appointed in subparagraph (A), the court shall terminate the appointment of legal counsel, unless the court determines that continued representation of the ward or conservatee and the estate is necessary and reasonable.

(5) If the conservator or guardian is exempt from the licensure requirements of Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code, upon ex parte application or any notice as the court may require, extend the time to file the accounting, not to exceed an additional 30 days after the expiration of the deadline described in subdivision (a), where the court finds there is good cause and that the estate is adequately bonded. After expiration of any extensions, if the accounting has not been filed, the court shall take action as described in paragraphs (1) to (3), inclusive.

(d) Subdivision (c) does not preclude the court from additionally taking any other appropriate action in response to a failure to file a proper accounting in a timely manner.

SEC. 26. Section 2623 of the Probate Code is amended to read:

2623. (a) Except as provided in subdivision (b) of this section, the guardian or conservator shall be allowed all of the following:

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

(2) Such compensation for services rendered by the guardian or conservator as the court determines is just and reasonable.

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

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

(5) In the case of termination by the death of the ward or conservatee, all reasonable expenses incurred prior to the discharge of the guardian or conservator by the court for the custody and conservation of the estate and its delivery to the personal representative of the estate of the deceased ward or conservatee or in making other disposition of the estate as provided for by law.

(b) The guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee.

SEC. 27. Section 2640 of the Probate Code is amended to read:

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

(1) The guardian or conservator of the estate for services rendered to that time.

(2) The guardian or conservator of the person for services rendered to that time.

(3) The attorney for services rendered to that time by the attorney to the guardian or conservator of the person or estate or both.

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

(c) Upon the hearing, the court shall make an order allowing (1) any compensation requested in the petition the court determines is just and reasonable to the guardian or conservator of the estate for services rendered or to the guardian or conservator of the person for services rendered, or to both, and (2) any compensation requested in the petition the court determines is reasonable to the attorney for services rendered to the guardian or conservator of the person or estate or both. The compensation allowed to the guardian or conservator of the person, the guardian or conservator of the estate, and to the attorney may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall thereupon be charged to the estate. Legal services for which the attorney may be compensated include those services rendered by any paralegal performing legal services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

(d) Notwithstanding the provisions of subdivision (c), the guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee.

SEC. 28. Section 2640.1 of the Probate Code is amended to read:

2640.1. (a) If a person has petitioned for the appointment of a particular conservator and another conservator was appointed while the petition was pending, but not before the expiration of 90 days from the issuance of letters, the person who petitioned for the appointment of a conservator but was not appointed and that person's attorney may petition the court for an order fixing and allowing compensation and reimbursement of costs, provided that the court determines that the petition was filed in the best interests of the conservatee.

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

(c) Upon the hearing, the court shall make an order to allow both of the following:

(1) Any compensation or costs requested in the petition the court determines is just and reasonable to the person who petitioned for the appointment of a conservator but was not appointed, for his or her services rendered in connection with and to facilitate the appointment of a conservator, and costs incurred in connection therewith.

(2) Any compensation or costs requested in the petition the court determines is just and reasonable to the attorney for that person, for his or her services rendered in connection with and to facilitate the appointment of a conservator, and costs incurred in connection therewith.

Any compensation and costs allowed shall be charged to the estate of the conservatee. If a conservator of the estate is not appointed, but a

conservator of the person is appointed, the compensation and costs allowed shall be ordered by the court to be paid from property belonging to the conservatee, whether held outright, in trust, or otherwise.

(d) It is the intent of the Legislature for this section to have retroactive effect.

SEC. 29. Section 2641 of the Probate Code is amended to read:

2641. (a) At any time permitted by Section 2640 and upon the notice therein prescribed, the guardian or conservator of the person may petition the court for an order fixing and allowing compensation for services rendered to that time.

(b) Upon the hearing, the court shall make an order allowing any compensation the court determines is just and reasonable to the guardian or conservator of the person for services rendered. The compensation allowed to the guardian or conservator of the person may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall thereupon be charged against the estate.

(c) The guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee.

SEC. 30. Section 2653 of the Probate Code is amended to read:

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

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

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

(1) The court shall award the petitioner the costs of the petition and other expenses and costs of litigation, including attorney's fees, incurred under this article, unless the court determines that the guardian or conservator has acted in good faith, based on the best interests of the ward or conservatee.

(2) The guardian or conservator may not deduct from, or charge to, the estate his or her costs of litigation, and is personally liable for those costs and expenses.

SEC. 31. Section 2701 of the Probate Code is amended to read:

2701. (a) A request for special notice may be modified or withdrawn in the same manner as provided for the making of the initial request.

(b) A new request for special notice may be served and filed at any time as provided in the case of an initial request.

SEC. 32. Section 2920 of the Probate Code is amended to read:

2920. (a) If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interests of the person, then either of the following shall apply:

(1) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if there is an imminent threat to the person's health or safety or the person's estate.

(2) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate in all other cases.

(b) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall order the public guardian to apply for appointment as guardian or conservator of the person, the estate, or the person and estate, on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person. However, if prior to the filing of the petition for appointment it is discovered that there is someone else who is qualified and willing to act as guardian or conservator, the public guardian shall be relieved of the duty under the order. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided for in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator.

(c) The public guardian shall begin an investigation within two business days of receiving a referral for conservatorship or guardianship.

SEC. 33. Section 2923 is added to the Probate Code, to read:

2923. On or before January 1, 2008, the public guardian shall comply with the continuing education requirements that are established by the California State Association of Public Administrators, Public Guardians, and Public Conservators.

SEC. 34. Section 11.5 of this bill incorporates amendments to Section 1850 of the Probate Code proposed by both this bill and SB 1716. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 1850 of the Probate Code, and (3) this bill is enacted after SB 1716, in which case Section 11 of this bill shall not become operative.

SEC. 35. Section 12.5 of this bill incorporates amendments to Section 1851 of the Probate Code proposed by both this bill and SB 1716. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 1851 of the Probate Code, and (3) this bill is enacted after SB 1716, in which case Section 12 of this bill shall not become operative.

SEC. 36. Sections 8, 11, 11.7, 12, 15, 15.5, 16, 17, 18, and 24 of this act shall become operative on July 1, 2007.

SEC. 37. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 38. This act shall become operative only if Senate Bill 1116, Senate Bill 1550, and Senate Bill 1716 of the 2005–06 Regular Session are enacted and become effective on or before January 1, 2007.