

CONCURRENCE IN SENATE AMENDMENTS

AB 2844 (Obernolte)

As Amended August 1, 2020

Majority vote

SUMMARY:

Allows the required original account statements that must be included as supporting documents for a guardian's or conservator's biennial accounting of their ward's or conservatee's estate to be provided in a verified electronic format.

Major Provisions

- 1) Requires that the account statements that must be included as supporting documents as part of a guardian's or conservator's accounting to the court of their ward's or conservatee's assets, after one year and biennially thereafter, can be a verified electronic statement, as defined. Requires that the guardian or conservator execute the verification.
- 2) Allows a court to 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.
- 3) Allows the original account statements showing the balance as of all periods covered by the accounting period, which all private professional or licensed guardians or conservators must file, to be filed by verified electronic statements, as defined.

The Senate Amendments:

Clarify that a court may 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, and require that the conservator or guardian execute any required verification.

COMMENTS:

In 2006, in response to shocking reports of abuse of California's frail and elderly, the Legislature passed the Omnibus Conservatorship and Guardianship Reform Act of 2006 (Omnibus Act, which included AB 1363 (Jones), Chapter 493, Statutes of 2006), a landmark bill to overhaul and expand court oversight of California's troubled conservatorship system and better protect the financial, physical and emotional well-being of vulnerable and dependent adults. As part of that increased oversight, conservators and guardians are now required to provide more detailed periodic accountings of their conservatee's or ward's assets to the courts, which must include certain original account statements, including bank account statements. However, since the time of that bill, more people bank online and may only receive electronic statements. This bill allows a guardian or conservator to submit an electronic statement in place of an original bank statement, provided the electronic statement is verified.

Court oversight includes review of detailed accountings provided by conservators and guardians. The Omnibus Act of 2006 was designed to overhaul California's troubled conservatorship system, remedy alarming deficiencies in California's conservatorship system, and help protect the financial, physical and emotional well-being of vulnerable and dependent

adults. In particular, AB 1363 (Jones) was designed to overhaul and increase court oversight of conservators and guardians. That bill required that court investigators increase investigations, limited the waiving of notice before appointment of a temporary conservator or guardian and limited the duties of a temporary conservator, required the probate court to review conservatorships at a noticed hearing six months after appointment of the conservator and annually thereafter, and required the Judicial Council to develop qualifications and continuing education requirements for probate court judges, attorneys and court investigators. In addition, and of particular relevance to this bill, AB 1363 required accountings to include specified supporting documentation and to be subject to random audit.

It is important to note that many of these court oversight requirements, critically important to protect vulnerable seniors from abuse, may not be enforced in many courts. In 2011, the Judicial Council sought and received relief from the mandates during the height of budget cuts caused by the 2008 financial crisis. (SB 78 (Budget and Fiscal Review Committee), Chapter 10, Statutes of 2011.) Unfortunately, while recent court budget increases have more than made up for the prior budget reductions, court conservatorships oversight requirements have not yet been mandated again, putting frail and vulnerable seniors and dependent adults at risk of abuse.

Required accountings must include detailed supporting documentation. As part of court oversight, guardians and conservators, at the expiration of one year from the time of their appointment and not less frequently than biennially thereafter, unless otherwise ordered by the court to be more frequent, must present to the court an accounting of the assets of the ward's or conservatee's estate for settlement and allowance. The accounting must be submitted on a Judicial Council form and must include all supporting documents. The supporting documents include all account statements showing the account balance as of the closing date of the accounting period. If the guardian or conservator is a licensed professional, the guardian or conservator must also file all original account statements showing the balance as of all periods covered by the accounting. Account statements include any original account statement from any financial or other institution, including banks, insurance companies and financial advisors.

Today substantial financial business is transacted online and this bill revises accounting statement requirements accordingly. Today banks and other financial institutions, as well as other institutions, maintain all of their records online, and more and more account holders no longer receive paper statements. Monthly statements are accessed online, rather than through the mail. This makes it difficult to comply with the existing law, which requires *original* account statements. This bill allows the account statements that must be included as supporting documents as part of a guardian's or conservator's accounting to the court to be provided as a verified electronic statement. This should ease the burden of doing business for both the court and guardians and conservators across California.

The bill cross-references the Code of Civil Procedure to set out how the verification must be done. Under that section – Code of Civil Procedure Section 2015.5 – if any matter must be supported, evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same, then it may be done by unsworn statement, declaration, verification, or certificate, in writing of such person which states that it is certified or declared by them to be true *under penalty of perjury*, is subscribed by them, and 1), if executed within this state, states the date and place of execution, or 2), if executed at any place, within or without this state, states the date of execution and that it is so certified or declared under the laws of the State of California.

This verification, which must be done under penalty of perjury, should help ensure that the electronic statements provided to the court are accurate while still minimizing the burden for guardians and conservators, and the courts.

According to the Author:

AB 2844 will add verified electronic bank statements to the acceptable bank statements that can be filed in support of accountings for guardianships and conservatorships, which will streamline and modernize the process as well as reduce delays and additional expenses. The digital age has completely changed the way people do business and day-to-day life. Over the past many years, technology has changed rapidly and as a result so has the way banking is done. Many banking activities that were previously done via paper are now done electronically. This includes bank statements. The requirement for an original bank statement is outdated and onerous and does not reflect current common banking practices, which include statements being delivered electronically. In fact, requiring original hard copy statements can cause unnecessary expense and delay in guardianship and conservatorship administrations.

Arguments in Support:

In support of this bill, the sponsor, the Conference of California Bar Associations, writes

Allowing the use of electronic statements and requiring the party submitting the electronic statements to verify authenticity of the same will reduce cost[s] and increase efficiency in the administration of guardianship and conservatorship administrations. For example, if a client sends their attorney bank statements electronically, the attorney can download and save the statements, and then electronically file the statements. Many counties are currently requiring, or will soon be requiring, all pleadings and other documents be “e-filed” with the court. This negates the need to print out potentially thousands of pages of documents which are then likely to be immediately shredded. From a judicial economy and resources perspective, if paper documents are not filed, staff members do not spend time scanning unnecessary documents into the court system which then may need to be shredded or returned to sender. AB 2844 will move accounting requirements pertaining to conservatorships and guardianships into the electronic age, saving valuable time and resources – which is critical, especially during this challenging time.

Arguments in Opposition:

None on file

FISCAL COMMENTS:

According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

VOTES:**ASM JUDICIARY: 10-0-1**

YES: Mark Stone, Gallagher, Chau, Chiu, Gonzalez, Holden, Kiley, Maienschein, Obernolte, Reyes

ABS, ABST OR NV: Kalra

ASM APPROPRIATIONS: 18-0-0

YES: Gonzalez, Bigelow, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Gabriel, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas, Voepel

ASSEMBLY FLOOR: 76-0-3

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Nazarian, O'Donnell, Obernolte, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood, Rendon

ABS, ABST OR NV: Low, Muratsuchi, Quirk

SENATE FLOOR: 39-0-1

YES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Melendez, Mitchell, Monning, Moorlach, Morrell, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Jones

UPDATED:

VERSION: August 1, 2020

CONSULTANT: Leora Gershenzon / JUD. / (916) 319-2334

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