Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 1194 (Low) – As Amended April 21, 2021

As Proposed to be Amended

SUBJECT: CONSERVATORSHIP

KEY ISSUES:

1) IN ORDER TO IMPROVE COURT OVERSIGHT OF CONSERVATORSHIPS AND BETTER PROTECT FRAIL AND VULNERABLE ADULTS, SHOULD KEY REFORMS OF THE 2006 OMNIBUS CONSERVATORSHIP AND GUARDIANSHIP REFORM ACT FINALLY BE IMPLEMENTED, INCLUDING REQUIRING MORE FREQUENT COURT INVESTIGATIONS INTO, AND REVIEWS OF, CONSERVATORSHIPS?

2) IN ORDER TO BETTER PROTECT WARDS AND CONSERVATEES FROM FISCAL HARM, SHOULD GUARDIANS AND CONSERVATORS, WHO LOSE DISPUTES OVER THEIR FEES, BE PROHIBITED FROM COLLECTING "FEES ON FEES," THAT IS, FEES AND COSTS FOR *UNSUCCESSFULLY* DEFENDING THEIR FEE PETITION?

3) SHOULD A NEW CIVIL PENALTY BE ESTABLISHED FOR CONSERVATORS WHO PHYSICALLY, MENTALLY, OR FINANCIALLY ABUSE THEIR CONSERVATEES OR DEPRIVE THEM OF NECESSARY CARE?

SYNOPSIS

In California, if an adult is unable to manage their financial affairs, a conservator of the estate may be appointed by a court to manage the adult's financial matters. If the adult is unable to manage their medical and personal needs, a conservator of the person may be appointed. A guardian may be appointed to protect a minor, the minor's estate, or both. The appointment process generally requires an investigation by a court investigator and approval by the court. Both conservatorships and guardianships involve a court-appointed third party – the conservator or guardian – making far-reaching, life-changing decisions on behalf of their charge – the conservatee or the ward.

Unfortunately, the conservatorship system has been riddled with significant and longstanding problems that have not been fully addressed, despite major legislation in the area, including the 2006 Omnibus Conservatorship and Guardianship Reform Act (Reform Act), a package of bills to overhaul California's conservatorship system by establishing greater court oversight and requiring that professional fiduciaries be licensed. This bill seeks to address many of the systemic problems by, among other things: (1) fully implementing the reforms of the 2006 Reform Act; (2) requiring better coordination between the courts and the licensing entity for professional guardians and conservators, the Professional Fiduciaries Bureau; (3) eliminating fees on fees when a conservator loses a court challenge to their fees or costs; (4) providing the court with better medical information before a general conservatorship is established or a temporary conservator is permitted to move a conservatee out of their house; and (5) establishing a new civil penalty against conservators who abuse their conservatees.

The author believes that these changes are necessary to fill the "gaping holes that allow vulnerable populations to be exploited." He adds that the "ease at which the current conservatorship system can be taken advantage of presents a large problem that must be addressed as soon as possible to protect those who are deemed unable to speak for themselves." The bill passed the Business & Professions Committee 17-0, is supported by the Coalition for Elder & Disability Rights (CEDAR) and the Depression and Bipolar Support Alliance, and has no official opposition.

SUMMARY: Enhances court oversight and regulation of professional fiduciaries, conservators, and guardians. Specifically, **this bill**:

1) Requires a licensed professional fiduciary who has an internet website to post on that website a schedule of fees charged for services offered.

2) Requires the Professional Fiduciaries Bureau (Bureau) to immediately revoke the license of a professional fiduciary if a court has found that the licensee has either abused, as defined in the Elder and Dependent Adult Civil Protection Act (EDACPA), or breached a fiduciary duty to, a ward or conservatee under their care.

3) Requires a court that has taken action to discipline a professional fiduciary to report that action to the Bureau.

4) Requires the Judicial Council, by January 1, 2023, to report to the Legislature the findings of a study measuring court effectiveness in conservatorship cases, including effectiveness in protecting the legal rights and best interests of conservatees. Requires the study, which shall include at least three courts of varying sizes, to include specified caseload statistics for both temporary and general conservatorships from the 2018-19 fiscal year, an analysis of compliance with statutory timeframes in that fiscal year, and a description of any operational differences between courts that affect the processing of conservatorship cases, including timeframes and steps taken to protect the legal rights and best interests of conservatees. Requires the report to 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.

5) Fully implements the enhanced court oversight of conservators under the Omnibus Conservatorship and Guardianship Reform Act of 2006 by deleting the court compliance limitation provided in SB 78 (Committee on Budget and Fiscal Review), Chap. 10, Stats. 2011. Full implementation includes requiring the probate court to review conservatorships at a noticed hearing six months after appointment of the conservator and annually thereafter, as specified.

6) Requires that the probate investigator's report prepared for a petition for a general conservatorship or, for an existing temporary conservatorship, a petition to move the conservatee from their residence, include relevant medical reports and supplemental information, including at least one report from the proposed conservatee's primary care physician, and that the investigator consider those reports when making the determination as to whether the appointment of the conservator is required or if the proposed conservatee suffers from specified mental function deficits that impair the conservatee, or in a petition to change the residence, 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. Requires that the investigator report made based on a proposed move of the conservatee be confidential and may only be made available to particular individuals. Eliminates the good cause exception to waive the investigator's required duties on a petition to change the residence of the conservatee.

7) Allows any person to petition the court to investigate an allegation of abuse, as defined, of a conservatee by a conservator, and requires the court to investigate all such allegations of abuse. Allows the court, if the court investigator has performed an investigation within the preceding six months and reported the results of that investigation to the court, to order, upon good cause shown, that a new investigation is not necessary or that a more limited investigation is sufficient.

8) In addition to any other remedies, if the court finds that a professional fiduciary has abused a conservatee, requires that the conservator be liable for a civil penalty of up to $5,000, payable to the conservatee. In addition to any other remedies, if the court finds that a non-professional fiduciary has abused a conservatee, requires that the conservator be liable for a civil penalty of up to $1,000, payable to the conservatee's estate.

9) Requires the court, if it finds that a professional fiduciary has abused the conservatee, as defined, or sanctions or removes for cause the professional fiduciary, to report that to the Professional Fiduciaries Bureau.

10) Removes the court-allowed exception and fully prohibits a guardian or conservator, who is not a trust company, in exercising their powers, from hiring or referring any business to an entity in which the guardian or conservator has a financial interest, as defined.

11) Requires that any expenses or compensation for a guardian or conservator be not only just and reasonable, but also in the best interest of the ward or conservatee. Requires that fees for services for the attorney to the guardian or conservator be in the best interest of the ward or conservatee.

12) Removes the exception and prohibits a guardian or conservator, if the court reduces or denies their compensation petition, from being paid by the estate of the ward or conservatee for the costs or fees that the guardian or conservator incurred in defending the compensation petition.

13) Removes the good cause exception and requires the court to award fees and costs, including attorney's fees, to anyone who successfully petitions for the removal of a guardian or conservator. Requires the court, if it determines that cause for removal exists for a professional fiduciary, to report that determination, and whether or not the fiduciary was removed, to the Professional Fiduciaries Bureau.

14) Makes other technical and conforming changes.

EXISTING LAW:

1) Allows a court to appoint a guardian of the person, the estate, or both for a child under 18 years of age, or 18 to 21 years of age as specified, taking into consideration the best interest of the proposed ward. (Probate Code Sections 1510, 1510.1. Unless otherwise stated, all further statutory references are to that code.)

2) Permits a court to appoint a conservator of the person for a person who is unable to provide properly for their personal needs for physical health, food, clothing, or shelter, as provided. Permits a court to appoint a conservator of the estate for a person who is substantially unable to manage their own financial resources or resist fraud or undue influence, except as provided. (Section 1801.)

3) Requires that a probate court investigator conduct an investigation before a petition for a general conservatorship is heard. Enhancements, made in 2006, to the required investigation later limited to provide that a superior court is not required to perform the expanded duties until the Legislature makes an appropriation identified for that purpose. (Section 1826, as amended by AB 1363 (Jones), Stats. 493, Chap. 2006, and SB 78 (Committee on Budget & Fiscal Review), Chap. 10, Stats. 2011.)

4) Requires, from the Omnibus Conservatorship and Guardianship Reform Act of 2006, that the probate court review conservatorships at a noticed hearing six months after appointment of the conservator and annually thereafter, as specified, but application later limited to provide that a superior court is not required to perform the expanded duties until the Legislature makes an appropriation identified for that purpose. Previous reviews limited to annually after the initial appointment and biennially thereafter. (Section 1850, as amended by AB 1363 (Jones), Stats. 493, Chap. 2006, and SB 78 (Committee on Budget & Fiscal Review), Chap. 10, Stats. 2011.)

5) Allows for the appointment of a temporary conservator or guardian, with powers generally limited to what are necessary to provide for the temporary care, maintenance, and support of the ward or conservatee and are necessary to conserve and protect the property of the ward or conservatee from loss or injury. Limits the ability of a temporary conservatee to change the residence of a conservatee and requires that a probate court investigator to conduct an investigation prior to court approval of such a change of residence. 2006 enhancements to the required investigation later limited to provide that a superior court is not required to perform the expanded duties until the Legislature makes an appropriation identified for that purpose. (Section 2250 *et seq.*, as amended by AB 1363 (Jones), Stats. 493, Chap. 2006, and SB 78 (Committee on Budget & Fiscal Review), Chap. 10, Stats. 2011.)

6) Establishes a presumption, applicable in a hearing to determine if removal of a conservatee from their personal residence is appropriate, that the personal residence of a conservatee is the least restrictive appropriate residence of the conservatee. Provides that this presumption may be overcome by a preponderance of evidence. (Section 2352.5.)

7) Prohibits a guardian or conservator, who is not a trust company, from hiring or referring any business to an entity in which the guardian or conservator has a financial stake, except upon authorization of the court. (Section 2401.)

8) Requires that a conservator or guardian be allowed payment for reasonable expenses incurred in the exercise of the powers and performance of their duties, including costs of surety bonds furnished, reasonable attorney's fees, and other just and reasonable compensation for services rendered to the conservatee or ward, as specified. (Section 2623.)

9) Provides that, 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 the guardian or conservator of the estate or person for services rendered to that time or to the guardian's or conservator's attorney for services rendered to that time. Requires the court, at a hearing on the fee petition, to make an order allowing (a) any compensation requested that the court determines is just and reasonable to the guardian or conservator for services rendered, and (b) any compensation requested that the court determines is reasonable to the guardian's or conservator's attorney for services rendered. Allows the compensation to the guardian or conservator, and to the attorney, in the discretion of the court, to include compensation for services rendered before the date of the order appointing the guardian or conservator. (Section 2640.)

10) Provides that 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, including a fee petition, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee. (Sections 2623 (b), 2640 (d), 2641 (c).)

11) Establishes the Professional Fiduciaries Bureau (Bureau) within the Department of Consumer Affairs. Requires that professional fiduciaries, which include guardians and conservators who serve two or more individuals at the same time who are not related to the professional fiduciary and not related to each other, be licensed by the Bureau. (Business & Professions Code Section 6500 *et al.*)

12) Requires the Bureau to investigate complaints against professional fiduciaries and allows the Bureau to discipline its licensees by suspending or revoking their licenses or by taking other disciplinary action. (Business & Professions Code Section 6580 *et seq.*)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: In California, if an adult is unable to manage their financial affairs, a conservator of the estate may be appointed by a court to manage the adult's financial matters. If the adult is unable to manage their medical and personal needs, a conservator of the person may be appointed. A guardian may be appointed to protect a minor, the minor's estate, or both. The appointment process generally requires an investigation by a court investigator and approval by the court. Both conservatorships and guardianships involve a court-appointed third party – the conservator or guardian – making far-reaching, life-changing decisions on behalf of their charge – the conservatee or the ward.

Unfortunately, the conservatorship system has been riddled with significant and longstanding problems that have not been fully addressed, despite major legislation in the area, including the 2006 Omnibus Conservatorship and Guardianship Reform Act (Reform Act), a package of bills to overhaul California's conservatorship system by establishing greater court oversight and requiring that professional fiduciaries be licensed. This bill seeks to address many of the systemic problems by, among other things: (1) fully implementing the reforms of the 2006 Reform Act; (2) requiring better coordination between the courts and the licensing entity for professional guardians and conservators, the Professional Fiduciaries Bureau; (3) eliminating fees on fees when a conservator loses a court challenge to their fees or costs; (4) providing the court with better medical information before a general conservatorship is established or a temporary conservator is permitted to move a conservatee out of their house; and (5) establishing a new civil penalty against conservators who abuse their conservatees.

In support of the bill, the author writes:

> The current conservatorship system has gaping holes that allow vulnerable populations to be exploited. Many conservatees are elderly, making them especially vulnerable in a court system where one medical finding removes almost all aspects of their autonomy.
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> The majority of appointed conservators are not professionally licensed, but rather family members or other unlicensed individuals. Conservatees themselves often do not have proper legal representation to argue on behalf of their interests. With little proper oversight, many instances exist of the finances of conservatees being hugely mismanaged, with some unknowingly losing large portions of their assets.
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> By 2040, it's estimated 20% of the U.S. population will be above the age of 65, increasing the number of conservatorships significantly. The ease at which the current conservatorship system can be taken advantage of presents a large problem that must be addressed as soon as possible to protect those who are deemed unable to speak for themselves.

History of conservatorships and guardianships in California. California adopted its first conservatorship statute in 1957. Prior to that time, the court appointed a "guardian" for any person, child or adult, who was deemed "incompetent" to manage their daily affairs. After 1957, the law distinguished between a "guardianship," created for a minor, and a "conservatorship," created for an adult. There are also specific types of conservatorships for persons who are considered "gravely disabled" by reason of mental illness or chronic alcoholism and subject to confinement in a locked psychiatric facility under the Lanterman-Petris-Short Act and for developmentally disabled adults. California law provides for the appointment of a Public Guardian for any person "who requires a guardian or conservator and there is no one else who is qualified and willing to act."

Guardians and conservators may be licensed professionals or family or friends. It has been estimated that approximately 1,000 professional conservators oversee $1.5 billion in assets for at least 4,600 adults. Most conservators, however, are non-professionals, usually family members, such as a spouse or a child. Likewise, guardians are typically family members.

Investigative journalism has revealed significant – and longstanding – problems with conservatorships in California. In November, 2005, the *Los Angeles Times* published an in-depth investigatory series, called "Guardians for Profit," which dramatically exposed the failings of California's conservatorship system for elderly and dependent adults. (Robin Fields, Evelyn Larrubia, and Jack Leonard, *Guardians for Profit* series, Los Angeles Times (Nov. 13-17, 2005).) The *Times* articles included stories of private conservators who misused the system and got themselves appointed inappropriately and then either stole or mismanaged the money their conservatees spent a lifetime earning; public guardians who did not have the resources to help truly needy individuals, leaving them – poor, alone and at risk of severe harm – to try and fend for themselves; probate courts which did not have sufficient resources to provide adequate oversight to catch the abuses; and a system that provided no place for those in need to turn to for help. The *Times* editorial which ran at the end of the series, called on both the courts and elected officials to "turn this abusive system into the honest guardianship it was meant to be." (*Deserving of Care,* Los Angeles Times (Nov. 17, 2005).)

The *Times* series included scores of examples of the failings of the conservatorship system, two of which exemplify many of the problems identified. As a child, Helen Jones helped her family

survive the Great Depression by collecting coal along railroad tracks in Nebraska and, during World War II, she was a real-life "Rosie the Riveter." At 87, she was controlled by a court-appointed conservator who she never wanted. Her neighbors and her legal services attorney claimed that Helen was alert, responsible, and "self-sufficient." Yet the conservator had reportedly spent $200,000 of Helen's $560,000 estate – at a rate of about $84,000 per year – mostly on things Helen never wanted.

Emmeline Frey was 93 years old and suffering from dementia by the time that a San Diego probate court appointed a professional conservator to manage her $1 million estate. The court-appointed conservator hired her own son, a former car salesman, as a financial advisor. She gave him $500,000 of Emmeline's estate to invest. He collected his commissions, paid for by the estate, even though his investments squandered $100,000 of Emmeline's money. Although court staff informed the presiding probate judge about the son's questionable investments, the judge reportedly did nothing. When asked later about his inaction, the judge claimed that he did not remember the case given that he handled as many as 100 cases per day.

Unfortunately, problems with conservatorships continued beyond the 2005 *Los Angeles Times* series. A 2012 *Mercury News* series exposed problems with exorbitant fee petitions. The article reported that "a six-month investigation by this newspaper found a small group of [Santa Clara] [C]ounty's court-appointed personal and estate managers are handing out costly and questionable bills -- and charging even more if they are challenged. The troubling trend is enriching these private professionals -- working as conservators and trustees -- and their attorneys, with eye-popping rates that threaten to force their vulnerable clients onto government assistance to survive." (Karen de Sá, *Santa Clara County's court-appointed personal and estate managers are handing out costly and questionable bills*, Mercury News (June 30, 2012).)

A 2018 *Orange County Register* story described problems with the conservatorship system:

> [C]ritics complain that some of the professionals are out to pad their own fees until the money is gone or substantially drained. They relate incidents of the elderly and disabled being isolated from their families by conservators, paying exorbitant professional fees for substandard care and seeing life savings and real estate holdings disappear while judges do nothing.
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> "Conservatorships are imposed (by judges) in minutes with nary a nod toward due process," said Linda Kincaid, co-founder of the Coalition for Elder and Disability Rights, based in Northern California. "Once the conservatorship is in place, there is essentially no court oversight or accountability. Conservators and their agents are free to exploit and abuse with impunity." (Tony Saavedra, *Money-draining probate system "like a plague on our senior citizens,"* Orange County Register (Sept. 23, 2018).)

Just this year, the sixth episode of the New York Times Presents, called "Framing Britney Spears," raised many issues about the Los Angeles County Superior Court's handling of Britney Spears' conservatorship, from whether she continues to need a conservator, to the conservator's significant fees and the court's refusal to let her hire an attorney of her choice to represent her.

Additionally, the recent movie *I Care a Lot*, while clearly a work of fiction, relied in part on issues raised by problematic conservatorships in other states when it depicted a predatory court-appointed guardian who colludes with an unscrupulous doctor to target vulnerable elderly people of means, forcibly removing them from their homes, shipping them off to nursing homes to be sedated, neglected, and sequestered. Meanwhile, she loots her victims' assets and sells their

personal residences, pocketing much of the proceeds, all under the color of law. While California has specific laws to prevent this from happening here, without vigorous court oversight of conservatorships, it is not impossible that such abuses could be happening in California today.

Legislative Response. In response to the shocking reports of abuse in the 2005 *Los Angeles Times* series, the Legislature passed the Omnibus Conservatorship and Guardianship Reform Act of 2006, a landmark package of bills to overhaul California's troubled conservatorship system. That legislation was designed to remedy alarming deficiencies in California's conservatorship system that had resulted in the abuses of California's elderly and most vulnerable. The package of bills were:

- AB 1363 (Jones), Chap. 493, Stats. 2006, which required much stronger and frequent reviews and responsibility of conservators by probate courts, along with uniform standards of conduct that conservators must follow, brand new and aggressive training rules for all professionals involved in the system, and a new requirement that Public Guardians take the cases of all those at imminent risk of harm.
- SB 1116 (Scott), Chap. 490, Stats. 2006, which required stronger reviews and protections before a conservator can sell the personal residence of a conservatee.
- SB 1550 (Figueroa), Chap. 491, Stats. 2006, which created the Professional Fiduciaries Bureau within the Department of Consumer Affairs to license and regulate professional fiduciaries, including conservators, guardians, and trustees.
- SB 1716 (Bowen), Chap. 492, Stats. 2006, which allowed the court to take action when it receives informal reports of abuse and neglect from concerned friends or family members; gave the court the ability to order a review of a conservatorship at any time; and required that court investigators more fully examine conservatees.

Unfortunately, while the Professional Fiduciaries Bureau within the Department of Consumer Affairs now licenses and regulates professional fiduciaries, the important new court oversights were never funded and, as a result of action by the Judicial Council to avoid the new responsibilities without additional funding, are not mandated today. Thus, it is possible that some or many of the same abuses which took place prior to the 2006 Act could still be occurring today and that courts are simply not engaging in sufficient oversight to detect these abuses.

After the *Mercury News* series, the Legislature passed SB 156 (Beall), 2013, which sought to limit the fees that a conservator or guardian could collect. That legislation, however, was vetoed by the Governor who noted that the process could be improved and that he would have signed the bill if amendments taken in this Committee had not been later removed from the bill. As a result, it is possible that many of the concerning stories about financial misuse revealed by investigative reports are still occurring for vulnerable seniors in California.

Conservators and guardians have a fiduciary duty to protect their conservatees and wards and courts are required to provide oversight. The conservator-conservatee and the guardian-ward have a fiduciary relationship. (Section 2101.) The duties of conservators and guardians include the obligation to exercise ordinary care and diligence in managing and controlling the conservatee's or ward's estate. (Section 2401.) Probate Code Section 2102 provides that "[a] guardian or conservator is subject to the regulation and control of the court in the performance of the duties of the office." As court-appointed officers, conservators and guardians remain under the control and continuing jurisdiction of the court in the discharge of their duties. (*See Guardianship of Davis* (1967) 253 Cal.App.2d 754, 760.) "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." (Section 1850 (b); *Schwartz v. Labow* (2008) 164 Cal.App.4th 417, 427 (court may "intervene to protect abuses" by a fiduciary).)

This bill seeks to provide better court oversight of guardians and conservators in order to better protect the lives and financial interest of wards and conservatees. The bill seeks to improve necessary court oversight of conservatorships and guardianships by removing the limitation provided to the courts in SB 78 (Committee on Budget and Fiscal Review), Chap. 10, Stats. 2011. At the height of the last recession, in order to ease the fiscal burden on the courts, many court programs were suspended to save costs. This included many critically necessary court oversight functions to protect frail and vulnerable conservatees and wards from physical, mental, and financial abuse from the Omnibus Conservatorship and Guardianship Reform Act of 2006 (AB 1363 (Jones) Chap 493, Stats. 2006). This bill provides that these critically needed court oversight functions for probate conservators and guardians once again be required. These included:

- Doubling probate court investigators and court reviews of conservatorships from one year after establishment and biennially thereafter to six months after establishment and annually thereafter;
- Requiring the court investigator to conduct more thorough investigations, including interviewing a proposed conservatee's friends, neighbors, and relatives;
- Requiring, during annual investigations, that the conservator make available to the investigator all their books and records and that the report from the investigation be shared with the conservatee's relatives;
- Increasing requirements of biennial accountings; and
- Authorizing courts, in response to ex parte communications, to refer complaints regarding a conservator to a court investigator.

The increased oversight requirement, which the Judicial Council estimated would cost from $9.9 million to $17.4 million annually when AB 1363 was signed into law, remained for five years until, as part of significant court budget cuts during the great recession, the mandate was suspended by SB 78. Unfortunately, the requirement was never restored, even as the courts' budget increased substantially. According to data provided by the Legislative Analyst's Office, total state trial court funding has increased by *over $1 billion* (a nearly 50 percent increase) from the 2012-13 fiscal year to what is proposed in the 2021-22 budget year. Given the importance of ensuring that conservatorships are not established inappropriately and the ongoing need to protect frail and vulnerable conservatees from harm, both of which require enhanced court oversight, and the more than $1 billion in additional trial court funding, it appears long overdue to mandate compliance with the 2006 reforms.

The bill requires a study of court handling of conservatorship cases. The 2006 reform legislation mandated that the Judicial Council study the trial court's handling of conservatorship cases. That report, *Court Effectiveness in Conservatorship Case Processing: A Report to the Legislature* (Jan. 2008), provided limited data for the 2005-06 fiscal year, including the total number of conservatorship cases in California (45,181), the number of conservatorship petitions filed in the year (approximately 5,600), the time and staff required for processing cases, and that nearly one-quarter of the studied cases were missing investigation reviews and nearly 60 percent

of the studied cases did not have required reviews completed timely. There was no follow-up after implementation of the 2006 reform act, although as stated above, with the 2008 elimination of the mandate, it is unclear if any courts are today complying with the 2006 act to provide needed improvements in court oversight of conservatorships in California.

This bill seeks a more updated and more thorough study of basic data on conservatorship cases in California, as well as information on practices that best protect conservatees. In particular, this bill requires that the Judicial Council study the court effectiveness in conservatorship cases, including effectiveness in protecting the legal rights and best interests of a conservatee. The study, which includes at least three courts of varying sizes, will require specific caseload statistics for both temporary and general conservatorships from the 2018-19 fiscal year (the most recent year that the Judicial Council informs the Committee that data will be available and will not be impacted by COVID-19), an analysis of compliance with statutory timeframes in that fiscal year, and a description of any operational differences between courts that affect the processing of conservatorship cases, including timeframes and steps taken to protect the legal rights and best interests of conservatees. Data to be gathered include the number of conservatorships requested, denied, and granted; the number of cases in which court investigations were conducted; the number of cases in which review hearings were held; and the number of petitions challenging the action of a conservator, as well as the results of those petitions; all of which is to be divided by cases involving professional fiduciaries and cases with non-professional fiduciaries. It is hoped that this information will help the Legislature better understand the conservatorship caseload and what can be done to better protect conservatees.

Requires medical information to be part of the court investigator's report to the court for a general conservatorship and for a move during a temporary conservatorship. Today the decision about whether to establish a conservatorship, which limits the rights of a conservatee based on their inability to provide properly for their personal needs, manage their own financial resources, or resist fraud or undue influence, is made by a judge after reviewing the investigation of the probate court investigator and hearing the evidence presented by the parties. Despite the fact that the decision may be largely based on the medical condition of the proposed conservatee, there is no *requirement* that key medical information be provided to the court or the court investigator, such as a report by the proposed conservatee's primary care physician who may have the best information on the proposed conservatee's condition. This is in sharp contrast to the requirements for a conservatorship under the Lanterman-Petris-Short Act, though those conservatorships allow for placement in locked psychiatric facilities. (Note, a conservator under the Probate Code may be given special powers to place a conservatee with dementia – or major neurocognitive disorder – in a locked facility and require that they take psychotropic medication, but that requires medical support and appointment of counsel for the conservatee (Section 2356.5).)

To address the concern about lack of medical evidence supporting a probate conservatorship, this bill requires that the probate investigator's report prepared for both a petition for a general conservatorship and, in an existing temporary conservatorship, a petition to move the conservatee out of their residence, include relevant medical reports and supplemental information, including at least one report from the proposed conservatee's primary care physician. The bill requires that the investigator consider those reports when making the determination as to whether the appointment of the conservator is required or if the proposed conservatee suffers from specified mental function deficits that impair the conservatee, or for a petition to change the residence, 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. This should help provide the court with better information on which to base these critical, life-changing decisions.

Given the inclusion of medical information, it is important to ensure that the information remains confidential. Existing law already ensures that the probate investigation made in response to a petition for establishment of a general conservatorship is confidential. (Section 1826 (c).) In order to protect that same information in the investigator's report required before a move, this bill requires that report be made confidential and may only be made available to specified individuals.

Court investigation required if there is an allegation of abuse. To allow a court to better oversee conservatorships and protect conservatees, the bill allows any person to petition the court to investigate an allegation of abuse of a conservatee by a conservator. Abused is defined as it is under EDACPA to include physical abuse, neglect, abandonment, isolation, abduction, or other treatment resulting in physical or mental harm, and financial abuse. (*See* Welfare & Institutions Code Section 15610.07.) The court is then required to investigate any such allegations of abuse. However, if the court investigator has performed an investigation within the preceding six months and reported the results of that investigation to the court, the court may order, upon good cause shown, that a new investigation is not necessary or that a more limited investigation is sufficient. It is hoped that this last provision will minimizes the burden on the court, while still ensuring that the court is in a position to learn of abuse to conservatees and take steps to protect them from harm.

New civil penalty against abusive conservators. If a conservator – the person appointed by a court to take care of a conservatee – abuses a conservatee, as defined in EDACPA, the conservator can be removed as a conservator, lose their professional license, and be sanctioned under EDACPA. This bill augments those remedies and provides that a court may add a civil remedy to the other punishments. The penalty is up to $5,000 for professional fiduciaries and up to $1,000 for non-professional fiduciaries, such as family members. The penalty is to be paid to the conservatee. It is hoped that the risk of this additional penalty would prevent the person charged by the court with protecting a conservatee from harm – who has a fiduciary duty to take care of them – from not only breaching their fiduciary duty of care, but from actually abusing a conservatee under their care.

Limitation on acts and fees for conservators who act against the interest of their conservatees. As discussed above, there have been ongoing concern raised about some conservators or guardians who benefit themselves at the expense of their wards or conservatees, are challenged on the issue of their pay, lose, and still get paid from the estate of the ward or conservatee for their losing challenge. This bill seeks to limit these very questionable activities.

First, the bill removes the current court-permitted exception and fully prohibits a guardian or conservator, when they are performing any of their duties, from hiring or referring any business to an entity in which the guardian or conservator has a financial interest. (Note, under existing law, this restriction on self-dealing does not apply if the conservator or guardian is a trust company.) Thus, even if a court agrees, the guardian or conservators will no longer be able to enrich themselves by referring a ward's or conservatee's business to themselves.

Second, the bill requires that any expenses or compensation of a guardian or conservator be not only just and reasonable, as is required today, but also in the best interest of the ward or

conservatee. The bill makes that same best interest requirement for the fees of guardian's or conservator's attorney. It is hoped that this change would, in addition to helping prevent overcharging and unjust enrichment of the guardian or conservator, help ensure that the guardian's or conservator's actions actually benefit the ward or conservatee.

Third, this bill seeks to prevent the fees-on-fees that AB 156 (Beall), 2013, sought to prevent, by removing the exception and prohibiting a guardian or conservator, *if* the court reduces or denies their compensation, from being paid by the estate of the ward or conservatee for any costs or fees that the guardian or conservator incurred in defending their compensation petition. The guardian or conservator will still get whatever fees and costs are awarded by the court on the fee petition, but will not, under any circumstances, be able to recoup what they spent defending – and losing, at least in part – their compensation request.

Finally, the bill removes the good cause exception and requires the court to award fees and costs, including attorney's fees, to anyone who successfully petitions for the removal of a guardian or conservator, and prohibits the guardian or conservator from charging their ward or conservatee for their costs in that litigation. Thus, if a guardian or conservator is removed for cause, they will have to pay both the petitioner's costs and their own litigation costs.

These provisions, taken together, are all designed to prevent the guardian or conservator from enriching themselves at the expense of the ward or conservatee who the court has charged them with protecting.

Courts required to report misbehavior of professional fiduciaries to their licensing entity. This bill seeks to better connect court-penalized, wrongful activities of a professional fiduciary to their licensing entity – the Professional Fiduciaries Bureau within the Department of Consumer Affairs. Today, a professional fiduciary can be disciplined by the court, but it is not entirely clear if the Bureau will timely learn of that information or act on it. Current law requires the Bureau to deny a license to anyone who has been removed by a court as a fiduciary for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference, or who has demonstrated a pattern of negligent conduct, including a removal prior to 2009. (Business & Professions Code Section 6536 (e).) It also requires a professional fiduciary to notify the Bureau annually if they have been removed for cause from a position as, among other things, a guardian or conservator. (Business & Professions Code Section 6561 (a)(2).)

This bill requires a court, if it finds that a professional fiduciary has abused a conservatee or takes action to discipline, sanction, or remove for cause the professional fiduciary, to report that to the Bureau. The bill also requires that a court, if it determines that cause for removal exists for a professional fiduciary, to report that determination, and whether or not the professional fiduciary was removed, to the Professional Fiduciaries Bureau. The bill then requires the Bureau to immediately revoke the license of any professional fiduciary who has been found by a court to have either abused a ward or conservatee under their care, as defined in EDACPA, or breached a fiduciary duty to them.

While this bill helps ensure that probate court sanctions of professional conservators are reported to the Bureau timely and requires that certain of these actions led to license revocation, the bill provides no way for the professional fiduciary to challenge such revocations. As the bill moves forward, the author may want to consider providing an avenue for a licensee of the Bureau to challenge such an action.

Technical amendments. The most recent set of amendments to the bill require two small, technical changes for clarity and consistency. The two changes are:

1. On page 6, line 12: After "filed", insert: in the 2018-19 fiscal year

2. On page 9, line 13: Delete "contest" and insert: oppose

ARGUMENTS IN SUPPORT: In support of the bill, the Depression and Bipolar support Alliance writes: "This bill should offer additional protections to conservatees and help reduce the amount of abuse of the elderly and the mentally ill."

The Coalition for Elder & Disability Rights (CEDAR) supports the bill, stating the desire that the Professional Fiduciaries Bureau discipline or revoke the license of any of their licensed fiduciaries who has abused their charge.

Pending Related Legislation: AB 596 (Nguyen) would require attorneys appointed to represent conservatees or proposed conservatees to act as an advocate for their client. However, if the attorney determines that the client is unable to communicate, the bill would require the court to replace the attorney with a guardian ad litem. *Status:* In this Committee, no hearing scheduled.

AB 1062 (Mathis) would require notice before valueless property of a ward or conservator could be destroyed and would bring certain trusts involving the conservator under court supervision. *Status:* In this Committee, scheduled to be heard May 4, 2021.

SB 602 (Laird) would require probate conservators to submit, at specified points, comprehensive care plans for the care of conservatees and the management of their estates. *Status:* Passed the Senate Judiciary Committee and is awaiting hearing in the Senate Appropriations Committee.

SB 724 (Allen) would enhance legal representation of conservatees and proposed conservatees and would enhance court oversight of conservatorships and guardianships by mandating full compliance with the 2006 Omnibus Conservatorship and Guardianship Reform Act. *Status:* Passed the Senate Judiciary Committee and is awaiting hearing in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Coalition for Elder & Disability Rights (CEDAR)
Depression and Bipolar Support Alliance

Opposition

None on file

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