

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1194 (Low)
Version: April 28, 2021
Hearing Date: June 22, 2021
Fiscal: Yes
Urgency: No
JT

SUBJECT

Conservatorship

DIGEST

This bill, with respect to guardians and conservators, enhances oversight and investigations, augments remedies and penalties for misconduct, and imposes certain restrictions on fees and compensation. The bill also requires the Judicial Council, by January 1, 2023, to conduct a study regarding conservatorship cases.

EXECUTIVE SUMMARY

Following a 2005 *Los Angeles Times* investigative series that exposed numerous abuses by probate conservators, a major reform effort was undertaken. While some important changes were made, the Great Recession scuttled much of the effort's momentum, leaving numerous potential reforms unrealized, including some reforms related to judicial oversight of conservatorships that were enacted in 2006 but defunded in 2011.

A national spotlight is on conservatorships again. Investigative journalism, Congressional inquiries, documentaries, podcasts, and even a recent major motion picture have explored abusive practices across the country. A focal point has been the conservatorship of Britney Spears, the pop icon who has been under the legal control of her father for over a decade even though she has continued to tour and produce records, raking in tens of millions of dollars. Reformers argue that her legal entanglements are indicative of widespread abuses and systemic failures.

This bill activates the dormant 2006 reforms and seeks to further invigorate the regulation of guardians and conservators – particularly those who are professional fiduciaries – by, among other things: (1) requiring courts to investigate any allegation of abuse; (2) requiring courts to report misconduct to the licensing entity for professional guardians and conservators, the Professional Fiduciaries Bureau (Bureau); (3) requiring the Bureau to revoke the license of a professional fiduciary if they engaged in abuse or

breached their fiduciary duties; (4) establishing civil penalties for abusive conservators; and (5) restricting the fees and compensation of guardians and conservators. The bill also requires that evidence of a proposed conservatee's medical information be provided to the court before a general conservatorship is established or the temporary conservator is permitted to move a conservatee out of their house. Finally, the bill requires the Judicial Council to conduct a study measuring court effectiveness in conservatorship cases. The bill is author-sponsored and supported by the Coalition for Elder and Disability Rights and the Depression and Bipolar Support Alliance. There is no known opposition. Amendments are described in Comment 5.

If the bill passes this Committee, it will be heard in the Senate Committee on Business, Professions and Economic Development.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Authorizes a court to appoint a conservator of the person or estate of an adult, or both. (Prob. Code § 1800.3(a).)¹ Requires that the conservatorship be the least restrictive alternative needed for the protection of the conservatee. (*Id.* at (b).)
- 2) Provides that a conservator of the person may be appointed for a person who is unable to provide properly for their personal needs for physical health, food, clothing, or shelter. (§ 1801(a).) A conservator of the estate may be appointed for a person who is substantially unable to manage their own financial resources or resist fraud or undue influence. (*Id.* at (b).)
- 3) Authorizes a relative or other person on behalf of a minor, or the minor if 12 years of age or older, to file a petition for appointment of a guardian of the minor's estate or person. (§ 1510(a), (b).)
- 4) Establishes the Professional Fiduciaries Bureau within the Department of Consumer Affairs, which licenses, investigates complaints about, and takes disciplinary action against, professional guardians and conservators. (Bus. & Prof § 6500 et seq.)
- 5) Requires a probate court investigator to interview specified individuals and gather specified information in connection with a petition to establish a general conservatorship (§ 1826) and a petition for a temporary conservator to remove the conservatee from their residence (§ 2253). Allows a court to waive the latter investigation for good cause. (§ 2253(b).)

¹ All further section references are to the Probate Code unless otherwise indicated.

- 6) 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. (§ 2401.)
- 7) Generally authorizes a court to grant a guardian or conservator compensation for services rendered and expenses, costs, and fees incurred, if the court determines the compensation requested is just and reasonable. (§§ 2623(a), 2640(a), (c), 2641(a), (b).) Prohibits compensation from the estate for costs and fees 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. (§ 2623(b), 2640(d), 2641(c).)
- 8) Provides that if a court removes a guardian or conservator for cause, the court must award the petitioner the costs of the petition and other expenses and costs of litigation, including attorney's fees, unless the court determines that the guardian or conservator has acted in good faith, based on the best interests of the ward or conservatee. (§ 2653.)
- 9) Makes several provisions relating to judicial oversight and investigation of conservatorships optional until the Legislature makes an appropriation for these purposes. (§§ 1051, 1826, 1850, 1850.5, 1851, 1851.1, 2250, 2250.4, 2250.6, 2253, 2620.)

This bill:

- 1) Deletes the funding contingencies described above, thereby making those provisions relating to judicial oversight of conservatorships mandatory.
- 2) Requires a licensee with a website to post on the website a schedule of fees charged and services offered.
- 3) Requires the Bureau to immediately revoke a license if the licensee has been found by a court to have either abused, or breached a fiduciary duty to, a ward or conservatee under their care.
- 4) Requires the Judicial Council, on or before January 1, 2023, to report to the Legislature the findings of a study measuring court effectiveness in conservatorship cases, including the effectiveness of protecting the legal rights and best interests of a conservatee, as prescribed.
- 5) Requires a court investigator, in preparing a report in connection with a petition for general conservatorship, to gather and review relevant medical reports and supplemental information regarding the proposed conservatee, including at least one report from the proposed conservatee's primary care physician. Adds a similar provision for investigations connected with a temporary conservator's proposal to

move the conservatee from their residence; removes a good-cause exception for the investigation, thereby making it mandatory.

- 6) Provides that any person may petition the court to investigate an allegation of abuse of a conservatee by a conservator. Requires the court to investigate all such allegations, except as specified.
- 7) Provides that, in addition to any other remedies provided under statutory or common law, if a court finds a conservator has abused a conservatee, the conservator is liable to the conservatee's estate for a civil penalty of up to \$5,000 if the conservator is a licensee or \$1,000 if the conservator is not a licensee.
- 8) Removes the power of a court to authorize a guardian or conservator to hire, or refer business to, an entity in which the guardian or conservator has a financial interest.
- 9) Conditions a determination of a guardian or conservator's compensation, which must be just and reasonable under existing law, on also being in the best interest of the ward or conservatee. Provides that if the court reduces or denies compensation requested in a petition, the guardian or conservator cannot be compensated from the estate for the costs or fees incurred in defending any challenge to the compensation in the petition.
- 10) Provides that if a court removes a guardian or conservator for cause, the court must award the petitioner the costs of the petition and other expenses and costs of litigation, including attorney's fees, regardless of whether the guardian or conservator has acted in good faith, based on the best interests of the ward or conservatee.
- 11) Requires courts, upon disciplining or removing a professional fiduciary, or finding the fiduciary has abused a conservatee, to report the action to the Bureau.
- 12) Makes other technical and conforming changes.

COMMENTS

1. Author's statement

The author writes:

While the history of legislation makes it appear that the world of conservatorships is highly regulated with proper oversight, it appears to be to the contrary. The Professional Fiduciary Bureau who only oversees licensed fiduciaries is focused primarily on licensing and regulation. The majority of conservators appointed by the Courts are not

licensed or registered with very little oversight. The cases that involve complaints and are deemed to be worthy of an investigation are often overlooked by law enforcement and ultimately the court system. There is a disconnection between the rights of those conserved and the law. This bill is being introduced to protect those that are not able or forbidden to protect themselves.

2. Legal background

a. *Probate guardianships*

Probate guardianships are a “custodial arrangement [that] originated in the law governing the administration of decedents’ estates, but it has not been restricted to orphans. Long before the advent of the dependency statutes, probate guardianships were instituted when ‘conditions [were] shown to be such, by reason of the mental and moral limitations or delinquency of parents, that to allow the child to continue in their custody would be to endanger [the child's] permanent welfare.’ [Citation.] In such cases, courts recognized that the ‘right of the parent [to custody] must give way, its preservation being of less importance than the health, safety, morals, and general welfare of the child.’ [Citation.]” (*Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1121-1122, quoting *In re Imperatrice* (1920) 182 Cal. 355, 358.)

A probate court may appoint a guardian of the estate, of the person, or both, for a minor if it appears necessary and convenient. (§ 1514(a).) The court must be guided by what appears to be in the best interest of the proposed ward, taking into account the proposed guardian’s ability to manage and preserve the estate, as well as the proposed guardian’s concern for and interest in the welfare of the proposed ward. (*Id.* at (e)(1).) The court must give consideration to the ward’s preference as to the person to be appointed guardian if the proposed ward is of sufficient age to form an intelligent preference. (*Id.* at (e)(2).)

A guardianship proceeding is commenced when a relative or other person seeking appointment of a guardian files a petition with the court. (*See* §§ 1510, 1511.) Unless waived by the court, a court investigator, probation officer, or domestic relations investigator must make an investigation and file with the court a report and recommendation concerning each proposed guardianship of the person or guardianship of the estate. (§ 1513(a).) If the proposed guardian is a relative, the investigation must be made by a court investigator; otherwise, the investigation must be made by the county agency designated to investigate the potential dependency. (*Id.*) The report must include a social history of the proposed guardian and proposed ward, the relationship between the two, the anticipated duration of the guardianship, and the plans of both natural parents and the proposed guardian for the stable and permanent home for the child (unless the court waives this requirement for a relative guardian). (*Id.* at (a)(1)-(4).)

On proper showing, the court appoints the guardian by issuing an order appointing the guardian, as well as letters of guardianship. (§§ 2310, 2311.) The authority of a parent ceases during the guardianship. (Fam. Code § 7505(a).) Upon petition of the guardian, parent, or minor ward, the court may terminate the guardianship if it determines that it is in the ward's best interest. (§ 1601.) Otherwise, the guardianship terminates when the ward turns 18, dies, is adopted, or becomes emancipated. (§ 1600.)

b. Probate conservatorships

Before 1957, a guardianship petition was the only means by which a person could obtain the right to manage the affairs of a person adjudged to be "incompetent" or "insane." Because of the stigma associated with these labels, people who needed help managing their affairs were often reluctant to seek a guardianship. To avoid this stigma and help a broader class of people who did not necessarily need help in all facets of their life, this Committee, analyzing a State Bar Association proposal, argued for the creation of a new protective relationship, known as a conservatorship, under procedures set forth in the Probate Code. (*See Bd. of Regents v. Davis* (1975) 14 Cal.3d 33, 38 n.5; Stats. 1957, Ch. 1902.)

The Probate Code authorizes appointment of a "conservator of the person" if clear and convincing evidence shows that the conservatee cannot provide properly for their physical health, food, clothing or shelter needs. (§ 1801(a).) A "conservator of the estate" may be appointed by a court for a person who is substantially unable to manage their own financial resources or to resist fraud or undue influence. (§ 1801(b).) The conservatorship cannot be granted unless it is the least restrictive alternative needed for the protection of the conservatee. (§ 1800.3(b).) A relative, friend, public official, nonprofit agency, or professional conservator may petition the court to be appointed conservator of an individual, triggering an investigation followed by a hearing in which the proposed conservatee has the right to a jury trial. (§ 1827.) A probate conservator generally has no power to place the conservatee in a locked facility or to authorize the administration of psychotropic medications, unless the conservatee has dementia and the court grants the conservator special powers in this regard. (§§ 2356(a) & 2356.5; *Conservatorship of B.C.* (2016) 6 Cal.App.5th 1028, 1035.) Probate conservatorships last until the conservatee dies or until terminated by the court, but are reviewed regularly by the investigator and the court. (§§ 1850-51, 1860.)

c. Fiduciary duties of guardians and conservators

There is a fiduciary relationship between a conservator or guardian and conservatee or ward. (§ 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. (§ 2401.) 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." A conservator is also required to accommodate the desires of the conservatee, except to

the extent that doing so would violate the conservator's fiduciary duties or impose an unreasonable expense on the estate. (§ 2113.)

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." (§ 1850(b); *Schwartz v. Labow* (2008) 164 Cal.App.4th 417, 427 [court may "intervene to protect abuses" by a fiduciary].)

Furthermore, a court's failure to diligently scrutinize the actions of the conservator or guardian may constitute an abuse of discretion. In *Conservatorship of Presha* (2018) 26 Cal.App.5th 487, for instance, the Court of Appeal upheld the probate court's decisions to reduce the conservator's compensation and order the conservator to reimburse the conservatee's estate. (*Id.* at 499-500.) The court in *Presha* stated that the probate court would have been remiss in its duties to regulate and control the performance of the conservator had it suspected a breach of fiduciary duty and not examined the conservator's actions more closely. (*Id.* at 498.)

Finally, existing law establishes the Bureau within the Department of Consumer Affairs, which is the licensing entity for professional guardians and conservators. (Bus. & Prof § 6500 et seq.) The Bureau is required 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. (Bus. & Prof § 6580 et seq.) The Bureau may 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. (Bus. & Prof § 6536(e).) Existing law 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. (Bus. & Prof § 6561(a)(2).)

3. Conservatorship abuses and legislative responses

The recent movie *I Care a Lot* depicts a predatory court-appointed guardian who dupes a credulous judge and colludes with an unscrupulous doctor to serially target vulnerable elderly people of means, forcibly removing them from their homes, shipping them off to far-flung nursing homes to be sedated, neglected, and sequestered. Meanwhile, she speedily loots her victims' assets and sells their personal residences,

pocketing much of the proceeds, all under the color of law. While the storyline becomes sardonically farfetched, the premise borrows directly from recent headlines.²

Investigations across the country, particularly in warm climates with large populations of wealthy retirees, have revealed widespread abuses of guardianship systems.³ As the Baby Boomer generation ages, the coming “silver tsunami” heralds an unprecedented shift in wealth – estimates have since ranged as high as 68 trillion dollars⁴ – that will pass from one generation to the next.

In 2005, the *Los Angeles Times* published an award-winning series of articles highlighting flaws in California’s conservatorship system.⁵ The *Times* articles included stories of private conservators who misused the system to get appointed inappropriately and then either steal or mismanage the conservatee’s assets; public guardians who did not have the resources to help vulnerable individuals in need of assistance; probate courts that lacked sufficient resources to provide adequate oversight to catch the abuses; and a system that provided no recourse for those who needed help. The *Times* editorial that ran at the end of the series exhorted courts and elected officials to “turn this abusive system into the honest guardianship it was meant to be.”⁶

In response to the series, the Assembly and Senate Judiciary Committees convened an oversight hearing that included testimony from victims harmed by the system as well as representatives from the courts, the bar, court investigators, public guardians, professional conservators, and groups representing seniors. “All participants, without exception, agreed that the system was significantly underperforming and, as a result, harming conservatees and their loved ones. In addition, the witnesses agreed that the problems were only likely to increase exponentially as the baby boom population ages, with a significant increase in the population suffering from Alzheimer’s disease or similarly disabling diseases.”⁷

² Gonzales, Erica *Rosamund Pike Thanked ‘America’s Broken Legal System’ for Inspiring I Care a Lot*, (Mar. 1, 2021) <https://www.harpersbazaar.com/culture/film-tv/a35680171/i-care-a-lot-true-story/> (as of Mar. 2, 2021). In particular the movie draws from the marauding depredations of guardians in Clark County, Nevada. (See Aviv, Racheal, *How the Elderly Lose Their Rights* (Oct. 2017) *New Yorker*, <https://www.newyorker.com/magazine/2017/10/09/how-the-elderly-lose-their-rights> (as of Mar. 2, 2021); *The Guardians* (2018) documentary.)

³ Weiner, Rex *Inside the Battle for Britney Spears* (Dec. 19, 2019) *Los Angeles Magazine*, available at <https://www.lamag.com/mag-features/the-battle-for-britney-spears/> (as of Mar. 2, 2021).

⁴ *Id.* See also Sheng, Ellen *The \$68 trillion transfer of wealth in America is evaporating amid crisis* (Nov. 5, 2020) CNBC website, <https://www.cnbc.com/2020/11/05/68-trillion-transfer-of-wealth-in-america-is-evaporating-amid-crisis.html> (as of Apr. 6, 2021).

⁵ Robin Fields, Evelyn Larrubia, and Jack Leonard, *Guardians for Profit* series (Nov. 13-17, 2005) *Los Angeles Times*.

⁶ *Deserving of Care* (Nov. 17, 2005) *Los Angeles Times*, <https://www.latimes.com/archives/la-xpm-2005-nov-17-ed-conservators17-story.html> (as of Mar. 28, 2021).

⁷ Assembly Floor analysis of AB 1363 (Jones, Ch. 293, Stats. 2006), as amended Aug. 24, 2006, at 2-3.

In early 2006, then-Chief Justice Ron George appointed a Probate Conservatorship Task Force to evaluate the courts' role in the conservatorship system and to make recommendations for reform, if necessary.⁸ Composed of representatives from the courts, advocacy organizations, the Attorney General, legislative staff, practitioners in the conservatorship area, conservators, and other judicial officers, the Task Force held several public hearings and released its final report in October of 2007. The report detailed 85 recommendations and included items that needed further review, additional funding, changes in legislation or rules of court, and preparation of training materials and guidelines for the courts.

Meanwhile, the Legislature passed the Omnibus Conservatorship and Guardianship Reform Act of 2006, a package of bills to reform the conservatorship system. SB 1116 (Scott, Ch. 490, Stats. 2006) imposed requirements related to the sale of a conservatee's personal residence. SB 1550 (Figueroa, Ch. 491, Stats. 2006) established the Professional Fiduciaries Act for the licensing and oversight of professional fiduciaries. SB 1716 (Bowen, Ch. 492, Stats. 2006) expanded the scope of evaluations conducted by court investigators and established a protocol for ex parte communication with the court about a conservatorship. AB 1363 (Jones, Ch. 493, Stats. 2006) reformed certain aspects of the courts' oversight of conservatorships.⁹

However, after the Great Recession hit, SB 78 (Committee on Budget and Fiscal Review, Ch. 10, Stats. 2011) was enacted to suspend superior court duties added by the 2006 reforms until the Legislature makes an appropriation for these purposes, which to date has not occurred. Thus, it is possible that some of the same abuses that took place before the 2006 Act could still be occurring today and that courts simply lack the oversight resources to detect these abuses. As described below in Comment 5, this bill removes those funding contingencies, thereby activating those reforms.

A 2012 *Mercury News* series exposed a problem that conservatees and wards may have 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."¹⁰ In response, the Legislature passed SB 156 (Beall, 2013), which sought to

⁸ Jud. Council of Cal. Admin. Off. of Cts., Rep., *Final Report of the Probate Conservatorship Task Force* (Oct. 26, 2007) <https://www.courts.ca.gov/documents/102607itemD.pdf> (as of Mar. 28, 2021).

⁹ In 2008, the Task Force reported that 22 of its recommendations had been implemented through various means, including the Omnibus Act described above. Jud. Council of Cal. Admin. Off. of Cts., Rep., *Probate Conservatorship Task Force Recommendations to the Judicial Council: Status of Implementation* (Dec. 9, 2008) <https://www.courts.ca.gov/documents/120908item10.pdf> (as of Mar. 28, 2021).

¹⁰ 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).

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. That year, the Legislature also passed AB 937 (Wieckowski, Ch. 127, Stats. 2013), which clarified the personal rights of conservatees, including the right to receive visitors, phone calls, and mail.

And in 2015, this Committee held a hearing entitled “The Role of the Courts in Protecting California’s Increasing Aging and Dependent Adult Population.” The hearing included two panels on conservatorships: one addressing the judicial perspective that included a probate judge, court administrators, and a government affairs attorney. The other panel represented the perspectives of conservators and conservatees. The background paper for the hearing identified outstanding issues, best practices, and potential reforms.¹¹

More recently, a 2018 *Orange County Register* story described advocates’ complaints about the conservatorship system, including concerns raised by the sponsor of this bill:

[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.

“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.”¹²

While many of the most headline-grabbing examples of conservatorship abuses involve the depletion of sizeable estates by predatory conservators, academics and advocates have been sounding the alarm about how conservatorships are used to escalate the displacement of low-income individuals and communities of color in gentrifying neighborhoods.¹³ “The worst abuses are now occurring in cities where professional conservators are targeting the elderly who reside in gentrifying neighborhoods, working hand in hand with realtors, developers, and sometimes members of feuding

¹¹ *The Role of the Courts in Protecting California’s Increasing Aging and Dependent Adult Population* (Mar. 24, 2015) Senate Judiciary Committee https://sjud.senate.ca.gov/sites/sjud.senate.ca.gov/files/background_paper_conservatorship_oversight.pdf (as of Apr. 6, 2021).

¹² Tony Saavedra, *Money-draining probate system “like a plague on our senior citizens,”* *Orange County Register* (September 23, 2018).

¹³ Video, Panel: *The California Landscape: Confronting the Conservatorship Crisis*, REPAIR website, <http://repairconnect.org/california-landscape-confronting-conservatorship-crisis> (as of Mar. 1, 2021).

families to gain legal control. They can then remove the old folks from their homes – often against their will – institutionalize them, and rapidly acquire and flip aging housing stock.”¹⁴ SB 303 (Wieckowski, Ch. 847, Stats. 2019) ameliorated this problem by imposing a higher standard for the sale of a conservatee’s personal residence and limitations on the amount of compensation that may be paid to a guardian, conservator, or attorney from a ward’s or conservatee’s government benefits.

4. The conservatorship of Britney Spears

Following the advocacy efforts of a grassroots movement associated with the #FreeBritney handle and a recent *New York Times* documentary entitled “Framing Britney Spears,” the pop superstar’s conservatorship has come under scrutiny. The documentary revisits Britney’s childhood in a small Louisiana town, her meteoric rise to fame in the late 1990s as a teenager, and her public breakdown in the mid-2000s. Stalked by paparazzi, her personal struggles and tumultuous love-life were obsessively chronicled and dissected in media coverage that today scans as misogynistic. After multiple public incidents of seemingly erratic behavior, she was involuntarily hospitalized for mental health evaluation and treatment.

In 2008, Britney’s father was appointed as conservator of Britney’s estate and person, giving him control over her finances and medical decisions.¹⁵ Probate conservatorships are typically used for elderly individuals with dementia. But during her conservatorship, the now-39-year-old has produced hit records, gone on tour, headlined one of the most lucrative Vegas residencies ever, launched new business ventures, and made guest appearances on TV shows.¹⁶ At the outset of the conservatorship, her estate was worth under \$3 million.¹⁷ It is now worth an estimated \$60 million.¹⁸

In 2019, Britney ceased performing.¹⁹ Britney has attempted to have her father, who also serves as her business manager, removed from the role of conservator; her attorney informed the court that Britney will not perform again while her father oversees her.²⁰ The Los Angeles Superior Court rejected Britney’s request to remove her father from

¹⁴ *Inside the Battle for Britney Spears*, *supra*, note 3.

¹⁵ Laura Newberry, *Britney Spears hasn’t fully controlled her life for years. Fans insist it’s time to #FreeBritney* (Sep. 18, 2019) *Los Angeles Times*, <https://www.latimes.com/california/story/2019-09-17/britney-spears-conservatorship-free-britney> (as of Apr. 4, 2021). An attorney was appointed as co-conservator to help manage the singer’s financial assets; he relinquished these duties. (*Id.*)

¹⁶ Bianca Betancourt, *Why Longtime Britney Spears Fans Are Demanding to #FreeBritney* (Jun. 9, 2021) *Harper’s Bazaar*, available at <https://www.harpersbazaar.com/celebrity/latest/a34113034/why-longtime-britney-spears-fans-are-demanding-to-freebritney/> (as of Jun 14, 2021).

¹⁷ *Lawyer for Britney Spears’ father responds to fans over conservatorship* (Feb. 25, 2021), *The Guardian*, available at <https://www.theguardian.com/music/2021/feb/25/britney-spears-jaimie-spears-conservatorship-lawyer> (as of March 2, 2021).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

her conservatorship, but Bessemer Trust, a wealth management and investment advisory firm, has been appointed as co-conservator of her estate.²¹

Britney also attempted to hire her own attorney, a veteran estate and trust litigator.²² Despite conflicting medical reports about her mental health, Britney was deemed to lack the capacity to hire her own attorney.²³ Advocates of reform argue something is self-evidently rotten in a system that forces Britney, over her own apparent objections, to pay over \$1 million a year to an assemblage of professionals that includes people she has attempted to replace, as well as the attorneys and professionals assisting those people in thwarting that attempt²⁴ – all in the name of serving her best interests. Others point out that caution is warranted in drawing any firm conclusions about an individual's private struggle with mental health challenges; indeed, although Britney has sought a different conservator, it is not clear that she wants out of the conservatorship at this time.²⁵

5. Enhances regulation of guardians and conservators

a. Activates dormant 2006 reforms by eliminating funding contingencies

As noted above, when the Great Recession hit, the Legislature suspended many of the superior court duties added by the 2006 reforms until an appropriation is made for these purposes, which to date has not occurred. Thus, it is possible that some of the same abuses that took place before the 2006 reforms could still be occurring today and that courts simply lack the oversight resources to detect these abuses. This bill would strike the funding contingencies from these sections, thereby making them mandatory.

In broad strokes, these funding-contingent provisions do the following:

- Authorize courts, in response to ex parte communications regarding fiduciaries or conservatees or wards, to refer the issue to a court investigator to take appropriate action. (§1051.)
- Require the court investigator to, in addition to the proposed conservatee, interview the proposed conservator, the petitioner, the proposed conservatee's registered partner and relative within the first degree, and, to the greatest extent possible, relatives within the second degree, neighbors, and, if known, close friends, before the hearing. (§ 1826(a)(A)-(C).)
- Require, when a person who is the subject of a temporary conservatorship becomes the subject of a general petition for a conservatorship, that a second visit be made to the person and the report address the effect of the temporary conservatorship on the proposed conservatee. (*Id.* at (f).)

²¹ *Why Longtime Britney Spears Fans Are Demanding to #FreeBritney*, *supra*, note 16.

²² *Inside the Battle for Britney Spears*, *supra*, note 3.

²³ *Id.*

²⁴ *Id.*

²⁵ *Why Longtime Britney Spears Fans Are Demanding to #FreeBritney*, *supra*, note 16.

- Require periodic reviews of the conservatorship by the court six months after the initial appointment and one year after the appointment and annually thereafter, unless the court determines the conservator is acting in the best interests of the conservatee. (§ 1850(a).) Authorize the court, on its own motion or upon request by any interested person, to take appropriate action, including ordering a review of the conservatorship or an accounting of the assets of the estate. (*Id.* at (b).)
- Establish periodic reviews of limited conservatorships for developmentally disabled adults. (§ 1850.5.)
- Require the court's investigation to include an examination of the conservatee's placement, quality of care, including physical and mental treatment, and the conservatee's finances, as well as interviews with specified individuals, (§ 1851(a)(1)(C).) Require that a conservator make available, upon request of the court investigator, all books and records, including receipts and expenditures of the conservatorship. (*Id.* at (a)(3).) Require that the findings of the court investigator be mailed to the conservatee's spouse or registered domestic partner, their relatives in the first degree, or if there are no such relatives, to the next closest relatives, unless the court determines the mailing will harm the conservatee. (*Id.* at (b)(1).)
- Require, in the context of a petition to establish a temporary conservatorship or guardianship, that notice, along with a copy of the petition, be personally delivered to the proposed conservatee or ward and on persons required to be named in the petition. (§ 2250(e).) If the temporary conservatorship is granted ex parte, provides for a hearing on a petition to terminate the temporary conservatorship that may occur before the general petition for appointment of a conservator. (*Id.* at (h).)
- Require a proposed temporary conservatee to attend the hearing except in specified cases. (§ 2250.4.)
- Require court investigators for temporary conservatorship petitions to interview specified people; inform the proposed conservatee about temporary conservatorships and their right to attend the hearing, have it tried by jury, and be represented by legal counsel; determine the needs and wishes of the proposed conservatee; and report this information to the court. (§ 2250.6(a)-(c).) Require the investigator, if it appears that the temporary conservatorship is inappropriate, within two court days, provide a written report to the court so the court can consider taking appropriate action on its own motion. (*Id.* at (d).)
- Give the court more discretion in issuing orders related to the investigation of a temporary conservator's proposal to place the conservatee somewhere other than their residence. (§ 2253(b).)
- Require the filing of specified documentation and information along with each required court accounting from a guardian or conservator. (§ 2620(c).) Provide that accountings are subject to random or discretionary, full or partial review by the court. (*Id.* at (d).)

The author has agreed to amend the bill to include an additional related change to a similar funding caveat in section 1851.1:

Amendment

Strike subdivision (g) from Section 1851.1.

Of the various reforms the Legislature is contemplating, these simple but consequential changes are the low-hanging fruit. To be sure, they will likely necessitate additional funding – the estimated costs of implementing these provisions in 2006 was \$23 million, a figure that is likely to be higher today – to ensure that courts are able to fully implement the provisions. But from a policy perspective, activating the reforms the Legislature has already vetted and approved are a crucial first step in any reform effort.²⁶

b. Ensures evidence of a person's medical condition is provided to the court

Under existing law, the probate investigator prepares a report for a petition for a general conservatorship or a petition to move the conservatee from their residence in an existing temporary conservatorship. (§§ 1826, 2253.) This report will be considered by the judge, along with 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. This bill requires the report to include relevant medical reports and supplemental information, including at least one report from the subject's primary care physician. The reports are confidential and may be provided only to specified individuals.

Additionally, the bill removes a good-cause exception for the investigation related to a temporary conservator's proposal to move the conservatee from their residence, thereby making the investigation mandatory.

c. Mandatory investigations of allegations of abuse

The bill provides that any person may petition the court to investigate an allegation of abuse of a conservatee by a conservator. The bill incorporates an existing definition of "abuse" from the Elder and Dependent Adult Civil Protection Act (Welf. & Inst. Code § 15600 et seq.), which defines the term to include physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering; and financial abuse. (Welf. & Inst. Code § 15610.07.) The bill requires investigate all such allegations. However, if the court

²⁶ Similar provisions in SB 724 (Allen, 2021) were removed by the Senate Appropriations Committee.

investigator has, within the preceding six months, performed an investigation and reported the results of that investigation to the court, the court may determine, upon good cause shown, that a new investigation is not necessary or that a more limited investigation is sufficient.

The author has agreed to amend this provision to enable the court to filter out implausible claims or those from a person with no personal knowledge of the conservatee. Those changes would be made as follows:

Amendment

1851.6. Any person *with personal knowledge of a conservatee* may petition the court to investigate an allegation of abuse, as defined by Section 15610.07 of the Welfare and Institutions Code, of ~~a~~ *the* conservatee by a conservator. The court shall investigate all such allegations *that establish a prima facie case* of abuse. If the court investigator has performed an investigation within the preceding six months and reported the results of that investigation to the court, the court may order, upon good cause shown, that a new investigation is not necessary or that a more limited investigation is sufficient.

d. Reporting and disciplining malfeasance by professional fiduciaries

Existing law requires the Bureau to deny an application for licensure 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 negligence. (Bus. & Prof. Code § 6536(e).) Existing law 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. (Bus. & Prof. Code § 6561(a)(2).) The Bureau also has investigatory and disciplinary powers. (Bus. & Prof. Code §§ 6580, 6584.) Proceedings against a licensee must be conducted in accordance with the Administrative Procedure Act. (§ 6582.)

To ensure timely administrative action is taken by the Bureau when a court finds a professional fiduciary has engaged in wrongdoing, the bill requires courts, upon disciplining or removing a professional fiduciary, or finding the fiduciary has abused a conservatee, to report the action to the Bureau. The bill requires the Bureau to immediately revoke a license if the licensee has been found by a court to have either abused, or breached a fiduciary duty to, a ward or conservatee under their care.

However, this provision could result in the revocation of a license where a professional fiduciary made a good faith mistake in violating a fiduciary duty. To endow the Bureau with some discretion to ensure that this provision is applied in circumstances that warrant revocation, the author has agreed to amend the bill as follows:

Amendment

Strike current 6584.5. Add:

6584.5. (a) *The bureau shall promptly initiate disciplinary proceedings against a licensee if the bureau receives either of the following:*

(1) *A report from a court that the court has done any of the following:*

(A) *Disciplined the licensee, as provided in subdivision (d) of Section 1051.*

(B) *Removed the licensee for cause, as provided in paragraph (3) of subdivision (c) of Section 2653.*

(C) *Made a finding that a licensee has abused a conservatee, as provided in subdivision (b) of Section 2112.*

(2) *A certified copy of any judicial or administrative finding that the licensee harmed a conservatee or ward in their care. "Harm" for purposes of this paragraph includes, but is not limited to, breaching a fiduciary duty or engaging in an act described in Section 15610.07 of the Welfare and Institutions Code.*

(b) *In a proceeding under subdivision (a), the bureau shall take the following actions:*

(1) *Revoke the license, if the bureau finds both of the following:*

(A) *The licensee acted willfully, with gross negligence, or with gross incompetence.*

(B) *The harm resulting from the act was substantial.*

(2) *If the bureau does not revoke the license pursuant to paragraph (1), suspend the license, unless the licensee shows both of the following:*

(A) *The licensee acted in good faith.*

(B) *No harm resulted from the act or the harm resulting from the act was minimal.*

(3) *If the bureau does not suspend the license pursuant to paragraph (2), place the license on probation.*

e. *Civil penalties for abusive conservators*

Under existing law, if a conservatee abuses a conservatee, the conservator can be removed as a conservator; if they are a professional fiduciary, they may lose their license, and face sanctions. (See Bus. & Prof. Code § 6580.) Additionally, a person who abuses an elder or dependent adult may be subject to civil damages and attorney's fees if it is proven by clear and convincing evidence that the person acted with recklessness, oppression, fraud, or malice in the commission of the abuse. (See Welf. & Inst. Code § 15657.)

To augment those remedies, the bill 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 owed to the estate of the conservatee.

To ensure this provision establishes strong incentives, the author has agreed to an amendment to increase the penalty cap for professional fiduciaries, and to make it

apply to each act of abuse by all guardians and conservators against wards or conservatees.

Amendment

Increase the penalty for professional fiduciaries to up to \$10,000 for each separate act of abuse. Make the penalty for non-professionals apply to each separate act of abuse.²⁷

f. Restrictions on fees and compensation

As discussed above, there have been ongoing concerns 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 questionable activities.

First, the bill requires a professional fiduciary with a website to post on the website a schedule of fees charged and services offered.

Second, existing law prohibits a guardian or conservator, when performing their duties, from hiring or referring any business to an entity in which the guardian or conservator has a financial interest, unless a court authorizes this. (§ 2401(c).) The bill would remove the court's authority to grant this exception.

Third, existing law generally authorizes a court to grant a guardian or conservator compensation for services rendered and expenses, costs, and fees incurred, if the court determines the compensation requested is just and reasonable. (§§ 2623(a), 2640(a), (c) & 2641(a), (b).) The bill generally requires such compensation to additionally be in the best interest of the ward or conservatee. Additionally, existing law prohibits compensation from the estate for costs and fees 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. (§ 2623(b), 2640(d), 2641(c).) The bill instead provides that if the court reduces or denies the compensation, the guardian or conservator cannot be compensated from the estate for costs or fees incurred in defending any challenge to the compensation in the petition.

Finally, existing law authorizes removal of a guardian or conservator for cause. (§ 2653(b).) The court must award fees and costs, including attorney's fees, to anyone who successfully petitions for the removal of a guardian or conservator, unless the court determines the guardian or conservator acted in good faith, based on the best interests

²⁷ Additional amendments may include technical, nonsubstantive changes recommended by the Office of Legislative Counsel and additional co-authors.

of the ward or conservatee. (*Id.* at (c)(1).) The bill eliminates this exception. Existing law also provides that if the guardian or conservator is removed, they cannot charge the ward or conservatee for their costs in that litigation. (*Id.* at (c)(2).) The bill broadens that prohibition to apply to their costs of opposing the petition for removal.

Collectively, these provisions are intended to prevent guardians and conservators from enriching themselves at the expense of those they are charged with protecting. By invigorating the regulatory framework for guardians and conservators, this bill provides important protections to vulnerable individuals, celebrity or otherwise.

6. Study on conservatorship cases

This bill requires the Judicial Council, on or before January 1, 2023, to report to the Legislature the findings of a study measuring court effectiveness in conservatorship cases, including the effectiveness of protecting the legal rights and best interests of a conservatee. The report must include caseload statistics, an analysis of compliance with statutory timeframes in the 2018 fiscal year, a description of any operational differences between courts that affect the processing of conservatorship cases. The report must also 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. The Judicial Council must select at least three courts for the evaluation, including one small court, one medium-sized court, and one large court. This information can help the Legislature make informed choices as it contemplates further reforms to the probate conservatorship system.

SUPPORT

Coalition for Elder and Disability Rights
Depression and Bipolar Support Alliance

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 602 (Laird, 2021) would require probate conservators to submit, at specified points, comprehensive care plans for the care of conservatees and the management of their estates. The bill has been moved to the Senate inactive file.

SB 724 (Allen, 2021) would strengthen rules governing the legal representation of conservatees and proposed conservatees. The bill has been moved to the Senate inactive file.

AB 596 (Nguyen, 2021) would require attorneys appointed to represent conservatees or proposed conservatees to act as an advocate for the 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. The bill is pending in the Assembly Judiciary Committee.

AB 1062 (Mathis, 2021) would require guardians and conservators to provide notice to certain individuals before disposing of valueless property, and would authorize those individuals to petition a court to resolve a dispute over the property. The bill is pending in this Committee.

Prior Legislation: See Comment 3.

PRIOR VOTES:

Assembly Floor (Ayes 76, Noes 0)
Assembly Appropriations Committee (Ayes 15, Noes 0)
Assembly Judiciary Committee (Ayes 11, Noes 0)
Assembly Business and Professions Committee (Ayes 17, Noes 0)
