

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

SB 1024 (Jones)  
Version: April 25, 2022  
Hearing Date: May 3, 2022  
Fiscal: No  
Urgency: No  
AM

**SUBJECT**

Replacement of an incapacitated or deceased professional fiduciary

**DIGEST**

This bill authorizes a conservator, agent under a power of attorney for asset management, representative of the estate, trustee of a trust, or interested person to petition for the appointment of a professional fiduciary practice administrator to act as a temporary professional fiduciary when a professional fiduciary either becomes incapacitated or dies and a vacancy exists, as provided. The bill authorizes the professional fiduciary practice administrator to petition the court for the appointment of a permanent successor, as specified.

**EXECUTIVE SUMMARY**

Existing law authorizes the conservator of the estate of a disabled attorney or the personal representative of a deceased attorney to petition the court seeking the appointment of an active licensee of the State Bar of California to take control of the files and assets of the practice of the disabled attorney or deceased attorney, as specified. This bill seeks to enact similar authority for certain parties to petition the court for the appointment a professional fiduciary practice administrator to take over the responsibilities of an incapacitated professional fiduciary or a deceased professional fiduciary, as provided.

The bill is sponsored by the Professional Fiduciary Association of California. There is no known opposition.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Specifies procedures for the establishment and termination of a guardian or conservatorship over a person (Prob. Code § 1500 et. seq. & § 1800 et. seq., respectively.)
- 2) Specifies procedures for the administration of an estate of a decedent. (Prob. Code § 7000 et. seq.)
- 3) Authorizes the conservator of the estate of a disabled attorney who was engaged in the practice of law at the time of the attorney's disability, or other person interested in the estate, to bring a petition seeking the appointment of an active licensee of the State Bar of California to take control of the files and assets of the practice of the disabled attorney, as provided. (Prob. Code 2468.)
- 4) Authorizes the personal representative of the estate of a deceased attorney who was engaged in a practice of law at the time of the attorney's death, or other person interested in the estate, to bring a petition for appointment of an active licensee of the State Bar of California to take control of the files and assets of the practice of the deceased attorney, as provided. (Prob. Code § 7000 et. seq.)
- 5) Provides for the licensure and regulation of professional fiduciaries under the Professional Fiduciaries Act. (Bus. & Prof. Code § 6500 et. seq.)

This bill:

- 1) Authorizes a conservator, agent under power of attorney for asset management, trustee, or interested person to petition the court for the appointment of one or more qualified individuals to act as a professional fiduciary practice administrator when a professional fiduciary becomes incapacitated and a vacancy exists or when a professional fiduciary is deceased and a vacancy exists, as provided.
- 2) Requires the filed petition to request an order appointing the professional fiduciary practice administrator as temporary successor with all of the powers and duties held by the incapacitated or deceased fiduciary.
- 3) Requires all persons entitled to notice in each of the matters in which the incapacitated or deceased fiduciary was acting in a representative capacity to be provided notice of the incapacity or death and that a vacancy exists as a result, except as specified.

- 4) Requires the appointed professional fiduciary practice administrator to do certain things, including:
  - a) taking control and reviewing all files maintained by the incapacitated or deceased fiduciary for matters in which they were acting in a representative capacity;
  - b) contact all interested parties as to each matter as specified;
  - c) file a copy of the order appointing the professional fiduciary practice administrator as temporary successor in each of the matters in which the court appoints them as successor; and
  - d) comply with any other obligation imposed by the court.
- 5) Authorizes the professional fiduciary practice administrator to file a petition seeking the appointment of a permanent successor as provided.
- 6) Requires the professional fiduciary practice administrator to be compensated for services provided and reimbursement of costs incurred in any particular matter solely from the assets of that matter, subject to the provisions of the applicable document or as determined by the court.
- 7) Defines various terms for these purposes:
  - a) “incapacitated” means that the person is unable to fulfill their duties as a professional fiduciary because of either temporary or permanent disability, incapacity, or absence;
  - b) “professional fiduciary practice administrator” means the person appointed to take over the responsibilities from the incapacitated or deceased fiduciary; and
  - c) “vacancy” means that the instrument under which the incapacitated or deceased fiduciary was acting does not name a successor to fill the vacancy, the instrument under which the incapacitated or deceased fiduciary was acting does not provide a nonjudicial method to fill the vacancy, and a cofiduciary, authorized to act solely, was not acting with the incapacitated or deceased fiduciary.

### COMMENTS

#### 1. Author’s statement

The author writes:

SB 1024 establishes a process for a probate court to appoint a professional fiduciary practice administrator as temporary successor in the event the original professional fiduciary becomes incapacitated or dies. When a professional fiduciary becomes incapacitated or dies and creates vacancies in multiple matters, there is a great risk that timely, essential actions will be missed without the expedited appointment of a temporary successor. The incapacity or death of

a professional fiduciary can have an immediate impact on multiple cases all at the same time.

There is currently no automatic succession plan in the law for the appointment of a temporary successor when a professional fiduciary becomes incapacitated or dies, creating multiple vacancies. There is also no statutory process for authorizing a single petition and streamlined process for the appointment of a temporary successor to replace a professional fiduciary who is suddenly dies or is incapacitated. This places a burden on the court to individually address a separate petition for each matter in which a professional fiduciary was acting in a representative capacity.

SB 1024 establishes a process for a Probate Court, as part of a single petition, to appoint a professional fiduciary practice administrator as temporary successor on each matter in which a professional fiduciary was acting in a representative capacity when the fiduciary becomes incapacitated or dies creating vacancies in multiple matters. It also further defines the terms “incapacity” and “vacancy” for this specific situation. The bill also outlines the powers and duties of the fiduciary practice administrator and the process for compensation for the individual whom is appointed in this situation.

## 2. Background

Existing law authorizes the conservator of the estate of a disabled attorney or the personal representative of a deceased attorney to petition the court seeking the appointment of an active licensee of the State Bar of California to take control of the files and assets of the practice of the disabled attorney or deceased attorney. There is no similar authority for the appointment of a temporary successor when a professional fiduciary becomes incapacitated or dies, thus creating multiple vacancies. This bill seeks to remedy that issue by providing similar authority for the appointment of a professional fiduciary practice administrator to take over the responsibilities of an incapacitated professional fiduciary or a deceased professional fiduciary. According to the sponsor of the bill, there have been several instances where professional fiduciaries have died unexpectedly with ongoing practices creating numerous vacancies, each of which required a separate expedited hearing to fill the vacancies. The sponsor notes that the numerous petitions and hearings are a strain on the court’s time and the inability to get some of the vacancies filled can create hardships for those individuals who are dependent on their professional fiduciary to provide timely assistance, both personally and financially.

Specifically, the bill allows a conservator, agent under power of attorney for asset management, trustee, or interested person to petition the court for the appointment of one or more qualified individuals to act as a professional fiduciary practice administrator when a professional fiduciary becomes incapacitated or when a

professional fiduciary is deceased and a vacancy exists. The person appointed as a professional fiduciary practice administrator is required to be qualified to act as a professional fiduciary under the Professional Fiduciaries Act. The professional fiduciary practice administrator is intended to be appointed as a temporary successor with all of the powers and duties held by the incapacitated or deceased fiduciary. The bill specifies that its provisions are not intended to limit the existing authority of the court on its own motion to appoint a temporary guardian, conservator, or trustee, or make orders necessary to deal with an estate during the period between when a vacancy occurs in the office of personal representative and the appointment of a successor. (Prob. Code § 2250(j), 15642(e), & 8523, respectively.)

The bill specifies various procedures and requirements for making a petition, including:

- requiring the petition to allege the estimated value of assets in each matter in which the professional fiduciary practice administrator will be acting in a temporary representative capacity;
- requiring the professional fiduciary practice administrator to file a surety bond in each matter in which the professional fiduciary practice administrator is appointed temporary successor in the same amount required of the incapacitated or deceased fiduciary, or in an amount the court deems appropriate;
- the court to appoint the professional fiduciary practice administrator in writing as specified;
- requiring all persons entitled to notice to be given notice as provided, except that the court may dispense with notice if the petition alleges that the immediate appointment of a professional fiduciary practice administrator is required to safeguard the interests of an individual or an asset; and
- requiring the professional fiduciary practice administrator to be compensated for services provided and reimbursement of costs incurred.

The bill requires the professional fiduciary practice administrator to take control and review all files maintained by the incapacitated or deceased fiduciary for matters in which the fiduciary was acting in a representative capacity and to contact all interested parties as to each matter who can be reasonably ascertained and located to inform them of the appointment of the professional fiduciary practice administrator as temporary successor. The bill also authorizes the professional fiduciary practice administrator to file a petition seeking the appointment of a permanent successor.

### 3. Statements in support

The Professional Fiduciary Association of California, sponsor of the bill, writes:

[...] This proposed legislation is similar to the relief available in the event of the death or incapacity of an attorney. Specifically, Probate Code Section 9764 sets

forth a process for the Court to appoint an active member of the State Bar of California as a practice administrator to take control of the files and assets of the practice of the deceased attorney.

The incapacity or death of an active professional fiduciary creates vacancies in the multiple matters in which the professional fiduciary had been acting in a representative capacity (guardian, conservator, personal representative or trustee). Absent the timely appointment of a temporary successor, there is great risk that there will not be anyone legally authorized to address essential actions and responsibilities to the detriment of those who are dependent on the services routinely provided by incapacitated or deceased professional fiduciary.

A statutory process to address the practice of an incapacitated or deceased professional fiduciary does not currently exist. Under current law, where a vacancy is created by the incapacity or death of a professional fiduciary, in the office of guardian, conservator, administrator or trustee, in order for a temporary successor to be appointed, separate petitions are required to be filed for each matter. This places a burden on the court, and others, to individually address a separate petition for each matter in which a professional fiduciary had been acting in a representative capacity. SB 1024 provides a streamlined statutory process by which a single petition can be filed to fill each of the vacancies, (vacancy is defined is a vacancy that cannot be filled by a non-judicial manner), on a temporary basis, created by the incapacity or death of a professional fiduciary. [...]

### **SUPPORT**

Professional Fiduciary Association of California (sponsor)

### **OPPOSITION**

None known

### **RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: None known.

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