

Assembly Bill No. 1311

Passed the Assembly August 28, 2014

Chief Clerk of the Assembly

Passed the Senate August 21, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 2208, 2209, and 11302 of the Elections Code, and to amend Sections 1823, 1826, 1828, 1851, and 1910 of the Probate Code, relating to elections.

LEGISLATIVE COUNSEL’S DIGEST

AB 1311, Bradford. Recall elections and voter registration.

(1) Existing law prohibits a person from being registered as a voter except by affidavit of registration. If a court finds that a person is not capable of completing an affidavit of voter registration, as specified, existing law provides that a person shall be deemed mentally incompetent and disqualified from voting.

Existing law regulates the terms and conditions of conservatorships and creates various requirements for a court and a court investigator with regard to informing a proposed conservatee that he or she may be disqualified from voting if he or she is not capable of completing an affidavit of voter registration.

This bill would prohibit a person, including a conservatee, from being disqualified from voting on the basis that the person signs the affidavit of voter registration with a mark or a cross, signs the affidavit of voter registration with a signature stamp, or completes the affidavit of voter registration with the assistance of another person.

(2) Under existing law, if a vacancy occurs in an office after a recall petition is filed against the vacating officer, the recall election is required to proceed. The vacancy in that office is required to be filled as provided by law, but a person appointed to fill the vacancy holds office only until a successor is selected and qualifies for that office.

This bill would provide that upon the occurrence of a vacancy, the elections official for each county in which a section of the recall petition has been filed is required to immediately verify the signatures on the petition submitted to the elections official as of the date of the vacancy. If the elections official verifies that a sufficient number of signatures were filed as of the date of the vacancy, the recall election would be required to proceed. If the elections official verifies that an insufficient number of signatures,

or no signatures, were filed as of the date of the vacancy, the recall election would not proceed and the vacancy in the office that is the subject of the recall election would be filled as otherwise provided by law. The bill would delete the requirement that a person appointed to fill the vacancy holds office only until a successor is selected and instead would prohibit a person who was subject to a recall petition from being appointed to fill the vacancy in the office that he or she vacated or to fill any other vacancy in office on the same governing board for the duration of the term of office of the vacated seat.

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

SECTION 1. Section 2208 of the Elections Code is amended to read:

2208. (a) A person shall be deemed mentally incompetent, and therefore disqualified from voting, if, during the course of any of the proceedings set forth below, the court finds that the person is not capable of completing an affidavit of voter registration in accordance with Section 2150 and any of the following apply:

(1) A conservator for the person or the person and estate is appointed pursuant to Division 4 (commencing with Section 1400) of the Probate Code.

(2) A conservator for the person or the person and estate is appointed pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code.

(3) A conservator is appointed for the person pursuant to proceedings initiated under Section 5352.5 of the Welfare and Institutions Code, the person has been found not competent to stand trial, and the person's trial or judgment has been suspended pursuant to Section 1370 of the Penal Code.

(4) A person has plead not guilty by reason of insanity, has been found to be not guilty pursuant to Section 1026 of the Penal Code, and is deemed to be gravely disabled at the time of judgment as defined in paragraph (2) of subdivision (h) of Section 5008 of the Welfare and Institutions Code.

(b) If the proceeding under the Welfare and Institutions Code is heard by a jury, the jury shall unanimously find that the person is not capable of completing an affidavit of voter registration before the person shall be disqualified from voting.

(c) If an order establishing a conservatorship is made and in connection with the order it is found that the person is not capable of completing an affidavit of voter registration, the court shall forward the order and determination to the county elections official of the person's county of residence.

(d) A person shall not be disqualified from voting pursuant to this section on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration:

(1) Signs the affidavit of voter registration with a mark or a cross pursuant to subdivision (b) of Section 2150.

(2) Signs the affidavit of voter registration by means of a signature stamp pursuant to Section 354.5.

(3) Completes the affidavit of voter registration with the assistance of another person pursuant to subdivision (d) of Section 2150.

SEC. 2. Section 2209 of the Elections Code is amended to read:

2209. (a) For conservatorships established pursuant to Division 4 (commencing with Section 1400) of the Probate Code, the court investigator shall, during the yearly or biennial review of the conservatorship as required by Chapter 2 (commencing with Section 1850) of Part 3 of Division 4 of the Probate Code, review the person's capability of completing an affidavit of voter registration in accordance with Section 2150.

(b) (1) If the person had been disqualified from voting by reason of being incapable of completing an affidavit of voter registration, the court investigator shall determine whether the person has become capable of completing the affidavit in accordance with Section 2150 and subdivision (d) of Section 2208, and the investigator shall so inform the court.

(2) If the investigator finds that the person is capable of completing the affidavit in accordance with Section 2150 and subdivision (d) of Section 2208, the court shall hold a hearing to determine whether the person is in fact capable of completing the affidavit. If the person is found to be capable of completing the affidavit, the person's right to register to vote shall be restored, and the court shall so notify the county elections official.

(c) If the person had not been found to be incapable of completing an affidavit of voter registration, and the court investigator determines that the person is no longer capable of completing the affidavit in accordance with Section 2150 and

subdivision (d) of Section 2208, the investigator shall so notify the court. The court shall hold a hearing to determine whether the person is capable of completing an affidavit of voter registration in accordance with Section 2150 and subdivision (d) of Section 2208. If the court determines that the person is not so able, the court shall order the person to be disqualified from voting pursuant to Section 2208, and the court shall so notify the county elections official.

SEC. 3. Section 11302 of the Elections Code is amended to read:

11302. (a) Except as described in paragraph (3) of subdivision (b), if a vacancy occurs in an office after a recall petition is filed against the vacating officer, the recall election shall nevertheless proceed.

(b) (1) Upon the occurrence of the vacancy, the elections official for each county in which a section of the recall petition has been filed shall immediately verify the signatures on the petition submitted to the elections official as of the date of the vacancy.

(2) If the elections official verifies that a sufficient number of signatures were filed as of the date of the vacancy, the recall election shall proceed.

(3) If the elections official verifies that an insufficient number of signatures, or no signatures, were filed as of the date of the vacancy, the recall election shall not proceed and a vacancy in the office that is the subject of the recall election shall be filled as otherwise provided by law.

(4) A person who was subject to a recall petition may not be appointed to fill the vacancy in the office that he or she vacated and that person may not be appointed to fill any other vacancy in office on the same governing board for the duration of the term of office of the seat that he or she vacated.

SEC. 4. Section 1823 of the Probate Code is amended to read:

1823. (a) If the petition is filed by a person other than the proposed conservatee, the clerk shall issue a citation directed to the proposed conservatee setting forth the time and place of hearing.

(b) The citation shall include a statement of the legal standards by which the need for a conservatorship is adjudged as stated in Section 1801 and shall state the substance of all of the following:

(1) The proposed conservatee may be adjudged unable to provide for personal needs or to manage financial resources and, by reason thereof, a conservator may be appointed for the person or estate, or both.

(2) Such adjudication may affect or transfer to the conservator the proposed conservatee's right to contract, in whole or in part, to manage and control property, to give informed consent for medical treatment, and to fix a residence.

(3) (A) The proposed conservatee may be disqualified from voting pursuant to Section 2208 of the Elections Code if he or she is not capable of completing an affidavit of voter registration in accordance with Section 2150 of the Elections Code.

(B) The proposed conservatee shall not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration:

(i) Signs the affidavit of voter registration with a mark or a cross pursuant to subdivision (b) of Section 2150 of the Elections Code.

(ii) Signs the affidavit of voter registration by means of a signature stamp pursuant to Section 354.5 of the Elections Code.

(iii) Completes the affidavit of voter registration with the assistance of another person pursuant to subdivision (d) of Section 2150 of the Elections Code.

(4) The court or a court investigator will explain the nature, purpose, and effect of the proceeding to the proposed conservatee and will answer questions concerning the explanation.

(5) The proposed conservatee has the right to appear at the hearing and to oppose the petition, and in the case of an alleged developmentally disabled adult, to oppose the petition in part, by objecting to any or all of the requested duties or powers of the limited conservator.

(6) The proposed conservatee has the right to choose and be represented by legal counsel and has the right to have legal counsel appointed by the court if unable to retain legal counsel.

(7) The proposed conservatee has the right to a jury trial if desired.

SEC. 5. Section 1826 of the Probate Code is amended to read:

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

(a) Conduct the following interviews:

(1) The proposed conservatee personally.

(2) All petitioners and all proposed conservators who are not petitioners.

(3) The proposed conservatee's spouse or registered domestic partner and relatives within the first degree. If the proposed conservatee does not have a spouse, registered domestic partner, or relatives within the first degree, to the greatest extent possible, the proposed conservatee's relatives within the second degree.

(4) To the greatest extent practical and taking into account the proposed conservatee's wishes, the proposed conservatee's relatives within the second degree not required to be interviewed under paragraph (3), neighbors, and, if known, close friends.

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

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

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

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

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

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

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

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

(h) (1) Determine whether the proposed conservatee is not capable of completing an affidavit of voter registration in accordance with Section 2150 of the Elections Code and may be disqualified from voting pursuant to Section 2208 of the Elections Code.

(2) The proposed conservatee shall not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration:

(A) Signs the affidavit of voter registration with a mark or a cross pursuant to subdivision (b) of Section 2150 of the Elections Code.

(B) Signs the affidavit of voter registration by means of a signature stamp pursuant to Section 354.5 of the Elections Code.

(C) Completes the affidavit of voter registration with the assistance of another person pursuant to subdivision (d) of Section 2150 of the Elections Code.

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

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

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

(1) Representation by legal counsel.

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

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

- (1) The attorney, if any, for the petitioner.
- (2) The attorney, if any, for the proposed conservatee.
- (3) The proposed conservatee.
- (4) The spouse, registered domestic partner, and relatives within the first degree of the proposed conservatee who are required to be named in the petition for appointment of the conservator, unless the court determines that the mailing will result in harm to the conservatee.
- (5) Any other persons as the court orders.

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

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

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

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

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

(r) The Judicial Council shall, on or before January 1, 2009, adopt rules of court and Judicial Council forms as necessary to implement an expedited procedure to authorize, by court order, a

proposed conservatee's health care provider to disclose confidential medical information about the proposed conservatee to a court investigator pursuant to federal medical information privacy regulations promulgated under the Health Insurance Portability and Accountability Act of 1996.

(s) A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by Chapter 493 of the Statutes 2006 until the Legislature makes an appropriation identified for this purpose.

SEC. 6. Section 1828 of the Probate Code is amended to read:

1828. (a) Except as provided in subdivision (c), prior to the establishment of a conservatorship of the person or estate, or both, the court shall inform the proposed conservatee of all of the following:

(1) The nature and purpose of the proceeding.

(2) The establishment of a conservatorship is a legal adjudication of the conservatee's inability properly to provide for the conservatee's personal needs or to manage the conservatee's own financial resources, or both, depending on the allegations made and the determinations requested in the petition, and the effect of such an adjudication on the conservatee's basic rights.

(3) (A) The proposed conservatee may be disqualified from voting pursuant to Section 2208 of the Elections Code if he or she is not capable of completing an affidavit of voter registration in accordance with Section 2150 of the Elections Code.

(B) The proposed conservatee shall not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration:

(i) Signs the affidavit of voter registration with a mark or a cross pursuant to subdivision (b) of Section 2150 of the Elections Code.

(ii) Signs the affidavit of voter registration by means of a signature stamp pursuant to Section 354.5 of the Elections Code.

(iii) Completes the affidavit of voter registration with the assistance of another person pursuant to subdivision (d) of Section 2150 of the Elections Code.

(4) The identity of the proposed conservator.

(5) The nature and effect on the conservatee's basic rights of any order requested under Chapter 4 (commencing with Section 1870), and in the case of an allegedly developmentally disabled adult, the specific effects of each limitation requested in such order.

(6) The proposed conservatee has the right to oppose the proceeding, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(b) After the court so informs the proposed conservatee and prior to the establishment of the conservatorship, the court shall consult the proposed conservatee to determine the proposed conservatee's opinion concerning all of the following:

(1) The establishment of the conservatorship.

(2) The appointment of the proposed conservator.

(3) Any order requested under Chapter 4 (commencing with Section 1870), and in the case of an allegedly developmentally disabled adult, of each limitation requested in such order.

(c) This section does not apply where both of the following conditions are satisfied:

(1) The proposed conservatee is absent from the hearing and is not required to attend the hearing under subdivision (a) of Section 1825.

(2) Any showing required by Section 1825 has been made.

SEC. 7. Section 1851 of the Probate Code is amended to read:

1851. (a) (1) If court review is required pursuant to Section 1850, the court investigator shall, without prior notice to the conservator except as ordered by the court for necessity or to prevent harm to the conservatee, visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine all of the following:

(A) Whether the conservatee wishes to petition the court for termination of the conservatorship.

(B) Whether the conservatee is still in need of the conservatorship.

(C) Whether the present conservator is acting in the best interests of the conservatee. In determining whether the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include an examination of the conservatee's placement, the quality of care, including physical and mental treatment, and the conservatee's finances. To the extent practicable, the investigator shall review the accounting with a conservatee

who has sufficient capacity. To the greatest extent possible, the court investigator shall interview individuals set forth in subdivision (a) of Section 1826, in order to determine if the conservator is acting in the best interests of the conservatee.

(D) (i) Whether the conservatee is not capable of completing an affidavit of voter registration in accordance with Section 2150 of the Elections Code and may be disqualified from voting pursuant to Section 2208 or 2209 of the Elections Code.

(ii) The conservatee shall not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration:

(I) Signs the affidavit of voter registration with a mark or a cross pursuant to subdivision (b) of Section 2150 of the Elections Code.

(II) Signs the affidavit of voter registration by means of a signature stamp pursuant to Section 354.5 of the Elections Code.

(III) Completes the affidavit of voter registration with the assistance of another person pursuant to subdivision (d) of Section 2150 of the Elections Code.

(2) If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked.

(3) Upon request of the court investigator, the conservator shall make available to the court investigator during the investigation for inspection and copying all books and records, including receipts and any expenditures, of the conservatorship.

(b) (1) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court. A copy of the report, modified as set forth in paragraph (2), also shall be mailed to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee.

(2) Confidential medical information and confidential information from the California Law Enforcement Telecommunications System shall be in a separate attachment to

the report and shall not be provided in copies sent to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and if there are no such relatives, to the next closest relative.

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

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

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

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

(g) A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by Chapter 493 of the Statutes 2006 until the Legislature makes an appropriation identified for this purpose.

SEC. 8. Section 1910 of the Probate Code is amended to read:

1910. (a) If the court determines the conservatee is not capable of completing an affidavit of voter registration in accordance with Section 2150 of the Elections Code, the court shall by order disqualify the conservatee from voting pursuant to Section 2208 or 2209 of the Elections Code.

(b) The conservatee shall not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration:

(1) Signs the affidavit of voter registration with a mark or a cross pursuant to subdivision (b) of Section 2150 of the Elections Code.

(2) Signs the affidavit of voter registration by means of a signature stamp pursuant to Section 354.5 of the Elections Code.

(3) Completes the affidavit of voter registration with the assistance of another person pursuant to subdivision (d) of Section 2150 of the Elections Code.

Approved _____, 2014

Governor