

AMENDED IN SENATE JUNE 24, 2013

AMENDED IN SENATE JUNE 10, 2013

AMENDED IN ASSEMBLY APRIL 22, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1339

Introduced by Assembly Member Maienschein

February 22, 2013

An act to amend Sections 1510, 1821, 2250, and 2643 of, and to add Sections ~~2614.7~~ 2614.7, 2614.8, and 2643.1 to, the Probate Code, relating to professional fiduciaries.

LEGISLATIVE COUNSEL'S DIGEST

AB 1339, as amended, Maienschein. Professional fiduciaries: guardians and conservators.

Existing law provides that a relative or other person on behalf of a minor, or a minor if he or she is 12 years of age or older, may file a petition for the appointment of a guardian of the person or estate of the minor. Existing law also provides that certain persons may file a petition for the appointment of a conservator. Existing law provides that on or after the filing of a petition for appointment of a guardian or conservator, a person entitled to petition for the appointment of a guardian or conservator may file a petition for the appointment of a temporary guardian or temporary conservator, as specified. Under existing law, when a petition to appoint a conservator or a temporary conservator is filed, and the petitioner is a professional fiduciary, as defined, the petition must include specified additional information, including the

petitioner's license information and a statement explaining who engaged the petitioner or how the petitioner was engaged to file the petition for appointment of a conservator and what prior relationship the petitioner had with the proposed conservatee or the proposed conservatee's family or friends.

This bill would require that when a petition to appoint a conservator or a temporary conservator is filed, and the petitioner or proposed conservator is a professional fiduciary, as defined, the petition also include the petitioner's or proposed conservator's proposed hourly fee schedule or another statement of the petitioner's or proposed conservator's proposed compensation from the estate of the proposed conservatee for services performed.

This bill would also require, when a petition to appoint a guardian or temporary guardian is filed, and the petitioner or proposed guardian is a professional fiduciary, as defined, the petition to include the same additional information as when a professional fiduciary files a petition to appoint a conservator or a temporary conservator.

Existing law requires, within 90 days of a guardian's or conservator's appointment, the guardian or conservator to file an inventory and appraisal.

This bill would require the guardian or conservator, if he or she is a professional fiduciary, as defined, to file concurrently with the inventory and appraisal a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed. *The bill would also authorize the guardian or conservator to submit a new proposed hourly fee schedule or another statement of his or her proposed compensation at any time on or after one year from the original submission, as specified.*

Existing law permits the court, on petition by the guardian or conservator, to authorize periodic payments on account to the guardian or conservator for the services rendered by those persons during the period covered by each payment.

This bill would permit the court, on petition by a guardian or conservator who is a professional fiduciary, as defined, to authorize periodic payments on account only if the guardian or conservator filed a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed with the inventory and appraisal and only after addressing all objections to the petition. This bill would also provide that the authorization for periodic payments to a guardian or conservator

who is a professional fiduciary, as defined, shall terminate ~~as of~~ *on a date determined by the court, but not later than* the due date of the next succeeding accounting.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 1510 of the Probate Code is amended to
2 read:

3 1510. (a) A relative or other person on behalf of the minor, or
4 the minor if 12 years of age or older, may file a petition for the
5 appointment of a guardian of the minor. A relative may file a
6 petition for the appointment of a guardian under this section
7 regardless of the relative's immigration status.

8 (b) The petition shall request that a guardian of the person or
9 estate of the minor, or both, be appointed, shall specify the name
10 and address of the proposed guardian and the name and date of
11 birth of the proposed ward, and shall state that the appointment is
12 necessary or convenient.

13 (c) The petition shall set forth, so far as is known to the
14 petitioner, the names and addresses of all of the following:

15 (1) The parents of the proposed ward.

16 (2) The person having legal custody of the proposed ward and,
17 if that person does not have the care of the proposed ward, the
18 person having the care of the proposed ward.

19 (3) The relatives of the proposed ward within the second degree.

20 (4) In the case of a guardianship of the estate, the spouse of the
21 proposed ward.

22 (5) Any person nominated as guardian for the proposed ward
23 under Section 1500 or 1501.

24 (6) In the case of a guardianship of the person involving an
25 Indian child, any Indian custodian and the Indian child's tribe.

26 (d) If the petitioner or proposed guardian is a professional
27 fiduciary, as described in Section 2340, who is required to be
28 licensed under the Professional Fiduciaries Act (Chapter 6
29 (commencing with Section 6500) of Division 3 of the Business
30 and Professions Code), the petition shall include the following:

31 (1) The petitioner's or proposed guardian's proposed hourly fee
32 schedule or another statement of his or her proposed compensation

1 from the estate of the proposed ward for services performed as a
2 guardian. The petitioner's or proposed guardian's provision of a
3 proposed hourly fee schedule or another statement of his or her
4 proposed compensation, as required by this paragraph, shall not
5 preclude a court from later reducing the petitioner's or proposed
6 guardian's fees or other compensation.

7 (2) Unless a petition for appointment of a temporary guardian
8 that contains the statements required by this paragraph is filed
9 together with a petition for appointment of a guardian, both of the
10 following:

11 (A) A statement of the petitioner's or proposed guardian's
12 license information.

13 (B) A statement explaining who engaged the petitioner or
14 proposed guardian or how the petitioner or proposed guardian was
15 engaged to file the petition for appointment of a guardian or to
16 agree to accept the appointment as guardian and what prior
17 relationship the petitioner or proposed guardian had with the
18 proposed ward or the proposed ward's family or friends.

19 (e) If the proposed ward is a patient in or on leave of absence
20 from a state institution under the jurisdiction of the State
21 Department of State Hospitals or the State Department of
22 Developmental Services and that fact is known to the petitioner
23 or proposed guardian, the petition shall state that fact and name
24 the institution.

25 (f) The petition shall state, so far as is known to the petitioner
26 or proposed guardian, whether or not the proposed ward is
27 receiving or is entitled to receive benefits from the Veterans
28 Administration and the estimated amount of the monthly benefit
29 payable by the Veterans Administration for the proposed ward.

30 (g) If the petitioner or proposed guardian has knowledge of any
31 pending adoption, juvenile court, marriage dissolution, domestic
32 relations, custody, or other similar proceeding affecting the
33 proposed ward, the petition shall disclose the pending proceeding.

34 (h) If the petitioners or proposed guardians have accepted or
35 intend to accept physical care or custody of the child with intent
36 to adopt, whether formed at the time of placement or formed
37 subsequent to placement, the petitioners or proposed guardians
38 shall so state in the guardianship petition, whether or not an
39 adoption petition has been filed.

1 (i) If the proposed ward is or becomes the subject of an adoption
2 petition, the court shall order the guardianship petition consolidated
3 with the adoption petition, and the consolidated case shall be heard
4 and decided in the court in which the adoption is pending.

5 (j) If the proposed ward is or may be an Indian child, the petition
6 shall state that fact.

7 SEC. 2. Section 1821 of the Probate Code is amended to read:

8 1821. (a) The petition shall request that a conservator be
9 appointed for the person or estate, or both, shall specify the name,
10 address, and telephone number of the proposed conservator and
11 the name, address, and telephone number of the proposed
12 conservatee, and state the reasons why a conservatorship is
13 necessary. Unless the petitioner or proposed conservator is a bank
14 or other entity authorized to conduct the business of a trust
15 company, the petitioner or proposed conservator shall also file
16 supplemental information as to why the appointment of a
17 conservator is required. The supplemental information to be
18 submitted shall include a brief statement of facts addressed to each
19 of the following categories:

20 (1) The inability of the proposed conservatee to properly provide
21 for his or her needs for physical health, food, clothing, and shelter.

22 (2) The location of the proposed conservatee's residence and
23 the ability of the proposed conservatee to live in the residence
24 while under conservatorship.

25 (3) Alternatives to conservatorship considered by the petitioner
26 or proposed conservator and reasons why those alternatives are
27 not available.

28 (4) Health or social services provided to the proposed
29 conservatee during the year preceding the filing of the petition,
30 when the petitioner or proposed conservator has information as to
31 those services.

32 (5) The inability of the proposed conservatee to substantially
33 manage his or her own financial resources, or to resist fraud or
34 undue influence.

35 The facts required to address the categories set forth in
36 paragraphs (1) to (5), inclusive, shall be set forth by the petitioner
37 or proposed conservator if he or she has knowledge of the facts or
38 by the declarations or affidavits of other persons having knowledge
39 of those facts.

1 If any of the categories set forth in paragraphs (1) to (5),
2 inclusive, are not applicable to the proposed conservatorship, the
3 petitioner or proposed conservator shall so indicate and state on
4 the supplemental information form the reasons therefor.

5 The Judicial Council shall develop a supplemental information
6 form for the information required pursuant to paragraphs (1) to
7 (5), inclusive, after consultation with individuals or organizations
8 approved by the Judicial Council, who represent public
9 conservators, court investigators, the State Bar, specialists with
10 experience in performing assessments and coordinating
11 community-based services, and legal services for the elderly and
12 disabled.

13 The supplemental information form shall be separate and distinct
14 from the form for the petition. The supplemental information shall
15 be confidential and shall be made available only to parties, persons
16 given notice of the petition who have requested this supplemental
17 information or who have appeared in the proceedings, their
18 attorneys, and the court. The court shall have discretion at any
19 other time to release the supplemental information to other persons
20 if it would serve the interests of the conservatee. The clerk of the
21 court shall make provision for limiting disclosure of the
22 supplemental information exclusively to persons entitled thereto
23 under this section.

24 (b) The petition shall set forth, so far as they are known to the
25 petitioner or proposed conservator, the names and addresses of the
26 spouse or domestic partner, and of the relatives of the proposed
27 conservatee within the second degree. If no spouse or domestic
28 partner of the proposed conservatee or relatives of the proposed
29 conservatee within the second degree are known to the petitioner
30 or proposed conservator, the petition shall set forth, so far as they
31 are known to the petitioner or proposed conservator, the names
32 and addresses of the following persons who, for the purposes of
33 Section 1822, shall all be deemed to be relatives:

34 (1) A spouse or domestic partner of a predeceased parent of a
35 proposed conservatee.

36 (2) The children of a predeceased spouse or domestic partner
37 of a proposed conservatee.

38 (3) The siblings of the proposed conservatee's parents, if any,
39 but if none, then the natural and adoptive children of the proposed
40 conservatee's parents' siblings.

1 (4) The natural and adoptive children of the proposed
2 conservatee's siblings.

3 (c) If the petitioner or proposed conservator is a professional
4 fiduciary, as described in Section 2340, who is required to be
5 licensed under the Professional Fiduciaries Act (Chapter 6
6 (commencing with Section 6500) of Division 3 of the Business
7 and Professions Code), the petition shall include the following:

8 (1) The petitioner's or proposed conservator's proposed hourly
9 fee schedule or another statement of his or her proposed
10 compensation from the estate of the proposed conservatee for
11 services performed as a conservator. The petitioner's or proposed
12 conservator's provision of a proposed hourly fee schedule or
13 another statement of his or her proposed compensation, as required
14 by this paragraph, shall not preclude a court from later reducing
15 the petitioner's or proposed conservator's fees or other
16 compensation.

17 (2) Unless a petition for appointment of a temporary conservator
18 that contains the statements required by this paragraph is filed
19 together with a petition for appointment of a conservator, both of
20 the following:

21 (A) A statement of the petitioner's or proposed conservator's
22 license information.

23 (B) A statement explaining who engaged the petitioner or
24 proposed conservator or how the petitioner or proposed conservator
25 was engaged to file the petition for appointment of a conservator
26 or to agree to accept the appointment as conservator and what prior
27 relationship the petitioner or proposed conservator had with the
28 proposed conservatee or the proposed conservatee's family or
29 friends.

30 (d) If the petition is filed by a person other than the proposed
31 conservatee, the petition shall include a declaration of due diligence
32 showing both of the following:

33 (1) Either the efforts to find the proposed conservatee's relatives
34 or why it was not feasible to contact any of them.

35 (2) Either the preferences of the proposed conservatee
36 concerning the appointment of a conservator and the appointment
37 of the proposed conservator or why it was not feasible to ascertain
38 those preferences.

39 (e) If the petition is filed by a person other than the proposed
40 conservatee, the petition shall state whether or not the petitioner

1 is a creditor or debtor, or the agent of a creditor or debtor, of the
2 proposed conservatee.

3 (f) If the proposed conservatee is a patient in or on leave of
4 absence from a state institution under the jurisdiction of the State
5 Department of State Hospitals or the State Department of
6 Developmental Services and that fact is known to the petitioner
7 or proposed conservator, the petition shall state that fact and name
8 the institution.

9 (g) The petition shall state, so far as is known to the petitioner
10 or proposed conservator, whether or not the proposed conservatee
11 is receiving or is entitled to receive benefits from the Veterans
12 Administration and the estimated amount of the monthly benefit
13 payable by the Veterans Administration for the proposed
14 conservatee.

15 (h) The petition may include an application for any order or
16 orders authorized under this division, including, but not limited
17 to, orders under Chapter 4 (commencing with Section 1870).

18 (i) The petition may include a further statement that the proposed
19 conservatee is not willing to attend the hearing on the petition,
20 does not wish to contest the establishment of the conservatorship,
21 and does not object to the proposed conservator or prefer that
22 another person act as conservator.

23 (j) In the case of an allegedly developmentally disabled adult,
24 the petition shall set forth the following:

25 (1) The nature and degree of the alleged disability, the specific
26 duties and powers requested by or for the limited conservator, and
27 the limitations of civil and legal rights requested to be included in
28 the court’s order of appointment.

29 (2) Whether or not the proposed limited conservatee is or is
30 alleged to be developmentally disabled.

31 Reports submitted pursuant to Section 416.8 of the Health and
32 Safety Code meet the requirements of this section, and
33 conservatorships filed pursuant to Article 7.5 (commencing with
34 Section 416) of Part 1 of Division 1 of the Health and Safety Code
35 are exempt from providing the supplemental information required
36 by this section, so long as the guidelines adopted by the State
37 Department of Developmental Services for regional centers require
38 the same information that is required pursuant to this section.

39 SEC. 3. Section 2250 of the Probate Code is amended to read:

1 2250. (a) On or after the filing of a petition for appointment
2 of a guardian or conservator, any person entitled to petition for
3 appointment of the guardian or conservator may file a petition for
4 appointment of:

- 5 (1) A temporary guardian of the person or estate, or both.
- 6 (2) A temporary conservator of the person or estate, or both.

7 (b) The petition shall state facts which establish good cause for
8 appointment of the temporary guardian or temporary conservator.
9 The court, upon that petition or other showing as it may require,
10 may appoint a temporary guardian of the person or estate, or both,
11 or a temporary conservator of the person or estate, or both, to serve
12 pending the final determination of the court upon the petition for
13 the appointment of the guardian or conservator.

14 (c) If the petitioner, proposed guardian, or proposed conservator
15 is a professional fiduciary, as described in Section 2340, who is
16 required to be licensed under the Professional Fiduciaries Act
17 (Chapter 6 (commencing with Section 6500) of Division 3 of the
18 Business and Professions Code), the petition for appointment of
19 a temporary guardian or temporary conservator shall include the
20 following:

21 (1) The petitioner's, proposed guardian's, or proposed
22 conservator's proposed hourly fee schedule or another statement
23 of his or her proposed compensation from the estate of the proposed
24 ward or proposed conservatee for services performed as a guardian
25 or conservator. The petitioner's, proposed guardian's, or proposed
26 conservator's provision of a proposed hourly fee schedule or
27 another statement of his or her proposed compensation, as required
28 by this paragraph, shall not preclude a court from later reducing
29 the petitioner's, proposed guardian's, or proposed conservator's
30 fees or other compensation.

31 (2) Unless a petition for appointment of a guardian or
32 conservator that contains the statements required by this paragraph
33 is filed together with a petition for appointment of a temporary
34 guardian or temporary conservator, both of the following:

35 (A) A statement of the petitioner's, proposed guardian's, or
36 proposed conservator's registration or license information.

37 (B) A statement explaining who engaged the petitioner, proposed
38 guardian, or proposed conservator or how the petitioner, proposed
39 guardian, or proposed conservator was engaged to file the petition
40 for appointment of a temporary guardian or temporary conservator

1 or to agree to accept the appointment as temporary guardian or
2 temporary conservator and what prior relationship the petitioner,
3 proposed guardian, or proposed conservator had with the proposed
4 ward or proposed conservatee or the proposed ward's or proposed
5 conservatee's family or friends.

6 (d) If the petition is filed by a party other than the proposed
7 conservatee, the petition shall include a declaration of due diligence
8 showing both of the following:

9 (1) Either the efforts to find the proposed conservatee's relatives
10 named in the petition for appointment of a general conservator or
11 why it was not feasible to contact any of them.

12 (2) Either the preferences of the proposed conservatee
13 concerning the appointment of a temporary conservator and the
14 appointment of the proposed temporary conservator or why it was
15 not feasible to ascertain those preferences.

16 (e) Unless the court for good cause otherwise orders, at least
17 five court days before the hearing on the petition, notice of the
18 hearing shall be given as follows:

19 (1) Notice of the hearing shall be personally delivered to the
20 proposed ward if he or she is 12 years of age or older, to the parent
21 or parents of the proposed ward, and to any person having a valid
22 visitation order with the proposed ward that was effective at the
23 time of the filing of the petition. Notice of the hearing shall not be
24 delivered to the proposed ward if he or she is under 12 years of
25 age. In a proceeding for temporary guardianship of the person,
26 evidence that a custodial parent has died or become incapacitated,
27 and that the petitioner or proposed guardian is the nominee of the
28 custodial parent, may constitute good cause for the court to order
29 that this notice not be delivered.

30 (2) Notice of the hearing shall be personally delivered to the
31 proposed conservatee, and notice of the hearing shall be served
32 on the persons required to be named in the petition for appointment
33 of conservator. If the petition states that the petitioner and the
34 proposed conservator have no prior relationship with the proposed
35 conservatee and has not been nominated by a family member,
36 friend, or other person with a relationship to the proposed
37 conservatee, notice of hearing shall be served on the public
38 guardian of the county in which the petition is filed.

39 (3) A copy of the petition for temporary appointment shall be
40 served with the notice of hearing.

1 (f) If a temporary guardianship is granted ex parte and the
2 hearing on the general guardianship petition is not to be held within
3 30 days of the granting of the temporary guardianship, the court
4 shall set a hearing within 30 days to reconsider the temporary
5 guardianship. Notice of the hearing for reconsideration of the
6 temporary guardianship shall be provided pursuant to Section
7 1511, except that the court may for good cause shorten the time
8 for the notice of the hearing.

9 (g) Visitation orders with the proposed ward granted prior to
10 the filing of a petition for temporary guardianship shall remain in
11 effect, unless for good cause the court orders otherwise.

12 (h) (1) If a temporary conservatorship is granted ex parte, and
13 a petition to terminate the temporary conservatorship is filed more
14 than 15 days before the first hearing on the general petition for
15 appointment of conservator, the court shall set a hearing within
16 15 days of the filing of the petition for termination of the temporary
17 conservatorship to reconsider the temporary conservatorship.
18 Unless the court otherwise orders, notice of the hearing on the
19 petition to terminate the temporary conservatorship shall be given
20 at least 10 days prior to the hearing.

21 (2) If a petition to terminate the temporary conservatorship is
22 filed within 15 days before the first hearing on the general petition
23 for appointment of conservator, the court shall set the hearing at
24 the same time that the hearing on the general petition is set. Unless
25 the court otherwise orders, notice of the hearing on the petition to
26 terminate the temporary conservatorship pursuant to this section
27 shall be given at least five court days prior to the hearing.

28 (i) If the court suspends powers of the guardian or conservator
29 under Section 2334 or 2654 or under any other provision of this
30 division, the court may appoint a temporary guardian or conservator
31 to exercise those powers until the powers are restored to the
32 guardian or conservator or a new guardian or conservator is
33 appointed.

34 (j) If for any reason a vacancy occurs in the office of guardian
35 or conservator, the court, on a petition filed under subdivision (a)
36 or on its own motion, may appoint a temporary guardian or
37 conservator to exercise the powers of the guardian or conservator
38 until a new guardian or conservator is appointed.

39 (k) On or before January 1, 2008, the Judicial Council shall
40 adopt a rule of court that establishes uniform standards for good

1 cause exceptions to the notice required by subdivision (e), limiting
2 those exceptions to only cases when waiver of the notice is
3 essential to protect the proposed conservatee or ward, or the estate
4 of the proposed conservatee or ward, from substantial harm.

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

9 SEC. 4. Section 2614.7 is added to the Probate Code, to read:

10 2614.7. If a guardian or conservator of the person or estate, or
11 both, is a professional fiduciary, as described in Section 2340, who
12 is required to be licensed under the Professional Fiduciaries Act
13 (Chapter 6 (commencing with Section 6500) of Division 3 of the
14 Business and Professions Code), the guardian or conservator shall
15 file, concurrently with the inventory and appraisal required by
16 Section 2610, a proposed hourly fee schedule or another statement
17 of his or her proposed compensation from the estate of the ward
18 or conservatee for services performed as a guardian or conservator.
19 The filing of a proposed hourly fee schedule or another statement
20 of the guardian's or conservator's proposed compensation, as
21 required by this section, shall not preclude a court from later
22 reducing the guardian's, conservator's, or his or her attorney's fees
23 or other compensation.

24 SEC. 5. Section 2614.8 is added to the Probate Code, to read:

25 2614.8. (a) At any time on or after one year from the
26 submission of an hourly fee schedule or another statement of
27 proposed compensation under this section or under Section 1510,
28 1821, 2250, or 2614.7, a guardian or conservator who is a
29 professional fiduciary may submit a new proposed hourly fee
30 schedule or another statement of his or her proposed compensation
31 from the estate of the proposed ward or proposed conservatee.

32 (b) (1) Notice of how to file an objection to the new proposed
33 hourly fee schedule or another statement of proposed compensation
34 shall be given for the period and in the manner provided in Chapter
35 3 (commencing with Section 1460) of Part 1.

36 (2) The notices required by paragraph (1) shall be made to the
37 court investigator, if appointed, for the period and in the manner
38 provided in Chapter 3 (commencing with Section 1460) of Part 1.

39 (c) (1) Any person entitled to notice under paragraph (1) of
40 subdivision (b) may file with the court a written objection to the

1 *new proposed hourly fee schedule or another statement of proposed*
2 *compensation. The court clerk shall set any objections for a*
3 *hearing no fewer than 15 days after the date the objections are*
4 *filed.*

5 *(2) If an objection is filed pursuant to paragraph (1), the*
6 *guardian or conservator shall have the burden of establishing the*
7 *need for the new proposed hourly fee schedule or another statement*
8 *of proposed compensation.*

9 ~~SEC. 5.~~

10 *SEC. 6.* Section 2643 of the Probate Code is amended to read:

11 2643. (a) Except as provided in Section 2643.1, on petition
12 by the guardian or conservator of the person or estate, or both, the
13 court may by order authorize periodic payments on account to any
14 one or more of the following persons for the services rendered by
15 that person during the period covered by each payment:

16 (1) The guardian of the person.

17 (2) The guardian of the estate.

18 (3) The conservator of the person.

19 (4) The conservator of the estate.

20 (5) The attorney for the guardian or conservator of the person
21 or estate, or both.

22 (b) Notice of the hearing on the petition shall be given for the
23 period and in the manner provided in Chapter 3 (commencing with
24 Section 1460) of Part 1.

25 (c) The petition shall describe the services to be rendered on a
26 periodic basis and the reason why authority to make periodic
27 payments is requested. In fixing the amount of the periodic
28 payment, the court shall take into account the services to be
29 rendered on a periodic basis and the reasonable value of those
30 services. The guardian or conservator of the estate may make the
31 periodic payments authorized by the order only if the services
32 described in the petition are actually rendered. The payments made
33 pursuant to the order are subject to review by the court upon the
34 next succeeding account of the guardian or conservator of the
35 estate to determine that the services were actually rendered and
36 that the amount paid on account was not unreasonable, and the
37 court shall make an appropriate order if the court determines that
38 the amount paid on account was either excessive or inadequate in
39 view of the services actually rendered.

1 ~~SEC. 6.~~

2 *SEC. 7.* Section 2643.1 is added to the Probate Code, to read:

3 2643.1. (a) On petition by a guardian or conservator of the
4 person or estate, or both, who is a professional fiduciary, as
5 described in Section 2340 and who is required to be licensed under
6 the Professional Fiduciaries Act (Chapter 6 (commencing with
7 Section 6500) of Division 3 of the Business and Professions Code),
8 the court may by order authorize periodic payments on account to
9 a person described in subdivision (a) of Section 2643 for the
10 services rendered by that person during the period covered by each
11 payment only if that person has filed a proposed hourly fee
12 schedule or another statement of his or her proposed compensation
13 from the estate of the ward or conservatee for services performed
14 as a guardian or conservator, as required by Section 2614.7, and
15 only after the court has addressed any objections filed pursuant to
16 subdivision (d).

17 (b) The petition shall describe the services to be rendered on a
18 periodic basis, the reason why authority to make periodic payments
19 is requested, and a good faith estimate of the fees to be charged
20 by the professional fiduciary from the date the petition is filed up
21 to, and including, the date of the next succeeding account required
22 by Section 2620 or, if the next succeeding account required by
23 Section 2620 is due in less than one year, a good faith estimate of
24 the fees to be charged by the professional fiduciary from the date
25 the petition is filed through the next succeeding 12 months,
26 inclusive. Prior to ordering periodic payments or fixing the amount
27 of the periodic payment, the court shall determine whether making
28 periodic payments is in the best interest of the ward or conservatee,
29 taking into consideration the needs of the ward or conservatee and
30 the need to preserve and protect the estate. If the court determines
31 that making periodic payments is not in the best interest of the
32 ward or conservatee, the court shall deny the petition to authorize
33 periodic payments. If the court determines that making periodic
34 payments is in the best interest of the ward or conservatee, the
35 court shall fix the amount of the periodic payment. In fixing the
36 amount of the periodic payment, the court shall take into account
37 the services to be rendered on a periodic basis and the reasonable
38 value of those services.

39 (c) (1) Notice of the hearing on the petition and notice of how
40 to file an objection to the petition shall be given for the period and

1 in the manner provided in Chapter 3 (commencing with Section
2 1460) of Part 1.

3 (2) The notices required by paragraph (1) shall be made to the
4 court investigator for the period and in the manner provided in
5 Chapter 3 (commencing with Section 1460) of Part 1.

6 (d) (1) Any person entitled to notice under paragraph (1) of
7 subdivision (c) may file with the court a written objection to the
8 authorization of periodic payments on account. The court clerk
9 shall set any objections for a hearing no fewer than 15 days after
10 the date the objections are filed.

11 (2) If an objection is filed pursuant to paragraph (1), the guardian
12 or conservator shall have the burden of establishing the necessity
13 for and amount, if any, of periodic payments.

14 (e) The guardian or conservator of the estate may make the
15 periodic payments authorized by the order only if the services
16 described in the petition are actually rendered. The payments made
17 pursuant to the order shall be reviewed by the court upon the next
18 succeeding account of the guardian or conservator of the estate to
19 determine that the services were actually rendered and that the
20 amount paid on account was reasonable and in the best interest of
21 the ward or conservatee, taking into consideration the needs of the
22 ward or conservatee and the need to preserve and protect the estate.
23 The court shall make an appropriate order reducing the guardian
24 or conservator's compensation if the court determines that the
25 amount paid on account was either unreasonable or not in the best
26 interest of the ward or conservatee in view of the services actually
27 rendered.

28 (f) The authorization for periodic payments granted pursuant
29 to this section shall terminate ~~as of~~ *on a date determined by the*
30 *court, but not later than* the due date of the next succeeding account
31 required by Section 2620. Nothing in this section shall preclude a
32 guardian or conservator from filing a subsequent petition to receive
33 periodic payments pursuant to this section.

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