

AMENDED IN ASSEMBLY MARCH 11, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2034

Introduced by Assembly Member Gatto

February 20, 2014

An act to amend Section 4701 of, to add Section 2361 to, and to add Part 7.5 (commencing with Section 3250) to Division 4 of, the Probate Code, relating to ~~conservators~~ family relations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2034, as amended, Gatto. ~~Conservatorships. Family relations: family visitation and conservatorships.~~

(1) Existing law establishes procedures by which a court may grant reasonable visitation rights to a parent of a minor child, unless it is shown that the visitation would be detrimental to the best interests of the child. Existing law requires the court, when determining the best interest of the child, to consider, among other factors, the health, safety, and welfare of the child. Existing law authorizes an adult having capacity to give a written advance health care directive and establishes a statutory advance health care directive form.

This bill would establish procedures by which a court may grant reasonable visitation rights to an adult child if a proposed visitee, as defined, expresses a desire for that visitation, unless the court determines that the visitation is not in the best interests of the proposed visitee. The bill would require a court investigator to prepare a report that contains, among other things, interviews of specified individuals, a determination of whether the proposed visitee has the capacity to consent to the requested visitation, and a determination of whether the proposed visitee desires the proposed visitation. The bill would make the court

investigator's report confidential and would make legislative findings and declarations regarding the privacy interests affected by the investigations that are protected by the bill. The bill would direct the court to consider, among other things, the history of the relationship between the proposed visitee and the adult child, any power of attorney or estate planning document that expresses an opinion on visitation, and the report prepared by the court investigator. This bill would revise the statutory advance health care directive form to authorize a person to establish a list of people who he or she would like, and would not like, to have visitations with.

Existing

(2) Existing law requires a conservator of a person to be responsible for the care, custody, control, and education of a conservatee, except where the court, in its discretion, limits the powers and duties of the conservator, as specified.

This bill would require a conservator to inform the relatives of a conservatee whenever a conservatee dies or is admitted to a medical facility for acute medical treatment *for a period of 3 days or more* and would require the conservator, in the event of death of the conservatee, to inform the relatives of any funeral arrangements and the location of the conservatee's final resting place. ~~The bill would also declare the intent of the Legislature to create a procedure that would provide reasonable accommodations for adult children who want to visit their parents when that parent may, or may not, be able to express their desire to see his or her children due to the presence of a caretaker who may not be relaying accurate information to the children from their parent.~~

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

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

1 ~~SECTION 1. It is the intent of the Legislature to create a~~
2 ~~procedure that would provide reasonable accommodations for~~
3 ~~adult children who want to visit their parents when that parent~~
4 ~~may, or may not, be able to express their desire to see his or her~~
5 ~~children due to the presence of a caretaker who may not be relaying~~
6 ~~accurate information to the children from their parent.~~

7 ~~SEC. 2.~~

8 SECTION 1. Section 2361 is added to the Probate Code, to
9 read:

2361. A conservator shall inform relatives of a conservatee, as defined in subdivision (b) of Section 1821, whenever a conservatee dies or is admitted to a medical facility for acute care *for a period of three days or more*. In the case of death, a conservator shall inform the relatives of any funeral arrangements and the location of the conservatee's final resting place.

SEC. 2. *Part 7.5 (commencing with Section 3250) is added to Division 4 of the Probate Code, to read:*

PART 7.5. RIGHTS OF ADULT CHILDREN AND VISITATION

3250. *As used in this part:*

(a) *"Proposed visitee" means an adult who is a parent and who does not have a conservator of the person and for whom a visitation decision is sought.*

(b) *"Visitation" means any in-person meeting between a proposed visitee and his or her adult child.*

(c) *"Visitation decision" means a decision regarding the proposed visitee's visitations, including the following:*

(1) *Approval or disapproval of any visitation.*

(2) *The specifics of that visitation, including, but not limited to, the time, place, and manner of the visitation.*

(d) *"Adult child" means an individual who is 18 years of age or older and is related to the proposed visitee biologically, through adoption, through the marriage or former marriage of the proposed visitee to the adult child's biological parent, or by a judgment of parentage entered by a court of competent jurisdiction.*

3251. (a) *A petition may be filed by an adult child to compel visitation with a proposed visitee.*

(b) *In ruling on the petition, the court shall determine if the proposed visitee has sufficient capacity to make a knowing and intelligent visitation decision.*

(c) *If the court determines that the proposed visitee has sufficient capacity to make a knowing and intelligent visitation decision, the court shall grant reasonable visitation if the proposed visitee expresses a desire for visitation, unless the court finds that such visitation is not in the best interests of the proposed visitee.*

(d) *If the proposed visitee lacks the capacity to make a knowing and intelligent visitation decision, then the court shall determine if the proposed visitee would want visitation. In determining*

1 whether or not the proposed visitee would or would not want a
2 visitation from the petitioner, the court shall consider the following:

3 (1) The history of the relationship between the proposed visitee
4 and the petitioner.

5 (2) Any statements made by the proposed visitee expressing his
6 or her desire to have a visitation with the petitioner.

7 (3) Any power of attorney or estate planning document that
8 expresses an opinion on visitation with the petitioner.

9 (4) The report of the court investigator prepared pursuant to
10 Section 3256.

11 (e) If the court determines that the proposed visitee would want
12 visitation, the court shall grant reasonable visitation, provided
13 the court determines that the visitation is in the best interests of
14 the proposed visitee.

15 (f) If the court determines that the proposed visitee has sufficient
16 capacity to make a knowing and intelligent visitation decision and
17 the proposed visitee expresses that he or she does not desire
18 visitation then the court shall not grant visitation.

19 (g) A determination by the court regarding capacity under this
20 part shall not be cited as evidence in any other legal proceeding.

21 3252. The petition may be filed in the superior court of any of
22 the following counties:

23 (a) The county in which proposed visitee resides.

24 (b) The county in which the proposed visitee is temporarily
25 living.

26 3253. The petition shall state, or set forth by a declaration
27 attached to the petition, all of the following known to the petitioner
28 at the time the petition is filed:

29 (a) The condition of the proposed visitee's health, to the extent
30 known by the petitioner.

31 (b) The proposed visitation that is to be considered.

32 (c) The efforts made to obtain visitation with the proposed
33 visitee.

34 (d) The deficit or deficits, if any, in the proposed visitee's mental
35 functions listed in subdivision (a) of Section 811 that are impaired,
36 and an identification of a link between the deficit or deficits and
37 the proposed visitee's inability to respond knowingly and
38 intelligently to queries about the requested visitation.

1 (e) *The names and addresses, so far as they are known to the*
2 *petitioner, of the persons specified in subdivision (b) of Section*
3 *1821.*

4 3254. *Upon the filing of the petition, the court shall determine*
5 *if the proposed visitee has retained an attorney to represent him*
6 *or her in the proceeding under this part or if the proposed visitee*
7 *plans to retain an attorney for that purpose.*

8 3255. (a) *Not less than 15 days before the hearing, notice of*
9 *the time and place of the hearing and a copy of the petition shall*
10 *be personally served on the proposed visitee, and the proposed*
11 *visitee's attorney, if any.*

12 (b) *Not less than 15 days before the hearing, notice of the time*
13 *and place of the hearing and a copy of the petition shall be mailed*
14 *to the following persons:*

15 (1) *The proposed visitee's spouse, if any, at the address stated*
16 *in the petition.*

17 (2) *The proposed visitee's relatives named in the petition at*
18 *each relative's address stated in the petition.*

19 3256. *Prior to the hearing, the court investigator shall do all*
20 *of the following:*

21 (a) *Conduct the following interviews:*

22 (1) *The proposed visitee.*

23 (2) *All petitioners.*

24 (3) *The proposed visitee's spouse or registered domestic partner*
25 *and relatives within the first degree.*

26 (4) *To the extent practical, neighbors, and, if known, close*
27 *friends of the proposed visitee.*

28 (b) *Inform the proposed visitee of the contents of the petition.*

29 (c) *Determine whether the proposed visitee has the capacity to*
30 *consent to the requested visitation.*

31 (d) *Determine whether the proposed visitee desires the proposed*
32 *visitation.*

33 (e) *Report to the court in writing, at least five days before the*
34 *hearing, concerning all of the foregoing.*

35 (f) *Mail, at least five days before the hearing, a copy of the*
36 *report referred to in subdivision (e) to all of the following:*

37 (1) *The attorney, if any, for the petitioner.*

38 (2) *The attorney, if any, for the proposed visitee.*

1 (3) *The spouse, registered domestic partner, and relatives within*
2 *the first degree of the proposed visitee, unless the court determines*
3 *that the mailing will result in harm to the proposed visitee.*

4 (4) *Any other persons as the court orders.*

5 (g) *The report required by this section is confidential and shall*
6 *be made available only to parties, persons described in subdivision*
7 *(f), persons given notice of the petition who have requested this*
8 *report or who have appeared in the proceedings, their attorneys,*
9 *and the court.*

10 (h) *If the court investigator has performed an investigation*
11 *within the preceding 12 months and furnished a report thereon to*
12 *the court, the court may order, upon good cause shown, that*
13 *another investigation is not necessary or that a more limited*
14 *investigation may be performed.*

15 3257. *The court in which the petition is filed has continuing*
16 *jurisdiction to revoke or modify an order made under this part*
17 *upon a petition filed, noticed, and heard in the same manner as*
18 *an original petition filed under this part.*

19 SEC. 3. *Section 4701 of the Probate Code is amended to read:*

20 4701. *The statutory advance health care directive form is as*
21 *follows:*

22
23 ADVANCE HEALTH CARE DIRECTIVE
24 (California Probate Code Section 4701)

25 Explanation

26
27 You have the right to give instructions about your own health
28 care. You also have the right to name someone else to make health
29 care decisions for you. This form lets you do either or both of these
30 things. It also lets you express your wishes regarding donation of
31 organs and the designation of your primary physician. If you use
32 this form, you may complete or modify all or any part of it. You
33 are free to use a different form.

34 Part 1 of this form is a power of attorney for health care. Part 1
35 lets you name another individual as agent to make health care
36 decisions for you if you become incapable of making your own
37 decisions or if you want someone else to make those decisions for
38 you now even though you are still capable. You may also name
39 an alternate agent to act for you if your first choice is not willing,
40 able, or reasonably available to make decisions for you. (Your

1 agent may not be an operator or employee of a community care
2 facility or a residential care facility where you are receiving care,
3 or your supervising health care provider or employee of the health
4 care institution where you are receiving care, unless your agent is
5 related to you or is a coworker.)

6 Unless the form you sign limits the authority of your agent, your
7 agent may make all health care decisions for you. This form has
8 a place for you to limit the authority of your agent. You need not
9 limit the authority of your agent if you wish to rely on your agent
10 for all health care decisions that may have to be made. If you
11 choose not to limit the authority of your agent, your agent will
12 have the right to:

13 (a) Consent or refuse consent to any care, treatment, service, or
14 procedure to maintain, diagnose, or otherwise affect a physical or
15 mental condition.

16 (b) Select or discharge health care providers and institutions.

17 (c) Approve or disapprove diagnostic tests, surgical procedures,
18 and programs of medication.

19 (d) Direct the provision, withholding, or withdrawal of artificial
20 nutrition and hydration and all other forms of health care, including
21 cardiopulmonary resuscitation.

22 (e) Make anatomical gifts, authorize an autopsy, and direct
23 disposition of remains.

24 (f) *Approve or disapprove any visitations.*

25 Part 2 of this form lets you give specific instructions about any
26 aspect of your health care, whether or not you appoint an agent.
27 Choices are provided for you to express your wishes regarding the
28 provision, withholding, or withdrawal of treatment to keep you
29 alive, as well as the provision of pain relief. Space is also provided
30 for you to add to the choices you have made or for you to write
31 out any additional wishes. If you are satisfied to allow your agent
32 to determine what is best for you in making end-of-life decisions,
33 you need not fill out Part 2 of this form.

34 Part 3 of this form lets you express an intention to donate your
35 bodily organs and tissues following your death.

36 Part 4 of this form lets you designate a physician to have primary
37 responsibility for your health care.

38 *Part 5 of this form lets you establish a list of people who you*
39 *would like to have visitations with.*

1 *Part 6 of this form lets you establish a list of people who you*
2 *would not want to have visitations with.*

3 After completing this form, sign and date the form at the end.
4 The form must be signed by two qualified witnesses or
5 acknowledged before a notary public. Give a copy of the signed
6 and completed form to your physician, to any other health care
7 providers you may have, to any health care institution at which
8 you are receiving care, and to any health care agents you have
9 named. You should talk to the person you have named as agent to
10 make sure that he or she understands your wishes and is willing
11 to take the responsibility.

12 You have the right to revoke this advance health care directive
13 or replace this form at any time.

14
15 *****

16
17 PART 1
18 POWER OF ATTORNEY FOR HEALTH CARE

19
20 (1.1) DESIGNATION OF AGENT: I designate the following individual
21 as my agent to make health care decisions for me:

22 _____
23 (name of individual you choose as agent)

24
25 _____
26 (address) (city) (state) (ZIP Code)

27
28 _____
29 (home phone) (work phone)

30
31 OPTIONAL: If I revoke my agent’s authority or if my agent is not willing,
32 able, or reasonably available to make a health care decision for me, I designate
33 as my first alternate agent:

34
35 _____
36 (name of individual you choose as first alternate agent)

37
38 _____
39 (address) (city) (state) (ZIP Code)

40

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent:

(name of individual you choose as second alternate agent)

(address) (city) (state) (ZIP Code)

(home phone) (work phone)

(1.2) AGENT'S AUTHORITY: My agent is authorized to make all health care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

(1.3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. If I mark this box ☐, my agent's authority to make health care decisions for me takes effect immediately.

(1.4) AGENT'S OBLIGATION: My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines

1 to be in my best interest. In determining my best interest, my agent shall
2 consider my personal values to the extent known to my agent.

3
4 (1.5) AGENT'S POSTDEATH AUTHORITY: My agent is authorized to
5 make anatomical gifts, authorize an autopsy, and direct disposition of my
6 remains, except as I state here or in Part 3 of this form:

7
8 _____
9 _____
10 _____
11 _____
12 _____

13 (Add additional sheets if needed.)

14
15 (1.6) NOMINATION OF CONSERVATOR: If a conservator of my person
16 needs to be appointed for me by a court, I nominate the agent designated in
17 this form. If that agent is not willing, able, or reasonably available to act as
18 conservator, I nominate the alternate agents whom I have named, in the order
19 designated.

20
21 PART 2
22 INSTRUCTIONS FOR HEALTH CARE

23
24 If you fill out this part of the form, you may strike any wording you do not
25 want.

26
27 (2.1) END-OF-LIFE DECISIONS: I direct that my health care providers
28 and others involved in my care provide, withhold, or withdraw treatment in
29 accordance with the choice I have marked below:

30
31 ☐ (a) Choice Not To Prolong Life

32 I do not want my life to be prolonged if (1) I have an incurable and
33 irreversible condition that will result in my death within a relatively short time,
34 (2) I become unconscious and, to a reasonable degree of medical certainty, I
35 will not regain consciousness, or (3) the likely risks and burdens of treatment
36 would outweigh the expected benefits, OR

37
38 ☐ (b) Choice To Prolong Life

39 I want my life to be prolonged as long as possible within the limits of
40 generally accepted health care standards.

(2.2) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

(Add additional sheets if needed.)

(2.3) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

(Add additional sheets if needed.)

PART 3
DONATION OF ORGANS AT DEATH
(OPTIONAL)

(3.1) Upon my death (mark applicable box):

- ☐ (a) I give any needed organs, tissues, or parts, OR
☐ (b) I give the following organs, tissues, or parts only.

(c) My gift is for the following purposes (strike any of the following you do not want):

- (1) Transplant
(2) Therapy
(3) Research
(4) Education

PART 4
PRIMARY PHYSICIAN
(OPTIONAL)

1

(4.1) I designate the following physician as my primary physician:

2

3

(name of physician)

4

5

6

(address)(city)(state)(ZIP Code)

7

8

(phone)

9

10

OPTIONAL: If the physician I have designated above is not willing, able,

11

or reasonably available to act as my primary physician, I designate the following

12

physician as my primary physician:

13

14

15

(name of physician)

16

17

18

(address)(city)(state)(ZIP Code)

19

20

21

(phone)

22

23

24

PART 5

25

VISITATION BY FAMILY AND FRIENDS

26

(OPTIONAL)

27

28

29

(5.1) The following person(s) shall have the ability to visit me at my domicile

30

or care facility:

31

32

(address)(city)(state)(ZIP Code)

33

34

(phone)

35

36

(address)(city)(state)(ZIP Code)

37

38

(phone)

39

40

(address)(city)(state)(ZIP Code)

(phone)

(address) (city) (state) (ZIP Code)

(phone)

PART 6
NON-VISITATION LIST
(OPTIONAL)

(6.1) The following person(s) shall NOT have the ability to visit me at my domicile or care facility:

(address) (city) (state) (ZIP Code)

(phone)

(address) (city) (state) (ZIP Code)

(phone)

(address) (city) (state) (ZIP Code)

(phone)

(address) (city) (state) (ZIP Code)

(phone)

PART-5 7

(5.1)

(7.1) EFFECT OF COPY: A copy of this form has the same effect as the original.

(5.2)

(7.2) SIGNATURE: Sign and date the form here:

1		
2	_____	_____
3	(date)	(sign your name)
4	_____	_____
5	(address)	(print your name)
6	_____	
7	(city) (state)	
8		
9	(5.3)	
10	(7.3) STATEMENT OF WITNESSES: I declare under penalty of perjury	
11	under the laws of California (1) that the individual who signed or acknowledged	
12	this advance health care directive is personally known to me, or that the	
13	individual's identity was proven to me by convincing evidence, (2) that the	
14	individual signed or acknowledged this advance directive in my presence, (3)	
15	that the individual appears to be of sound mind and under no duress, fraud, or	
16	undue influence, (4) that I am not a person appointed as agent by this advance	
17	directive, and (5) that I am not the individual's health care provider, an	
18	employee of the individual's health care provider, the operator of a community	
19	care facility, an employee of an operator of a community care facility, the	
20	operator of a residential care facility for the elderly, nor an employee of an	
21	operator of a residential care facility for the elderly.	
22		
23	First witness	Second witness
24		
25	_____	_____
26	(print name)	(print name)
27		
28	_____	_____
29	(address)	(address)
30		
31	_____	_____
32	(city) (state)	(city) (state)
33		
34	_____	_____
35	(signature of witness)	(signature of witness)
36		
37	_____	_____
38	(date)	(date)
39		
40	(5.4)	

(7.4) ADDITIONAL STATEMENT OF WITNESSES: At least one of the above witnesses must also sign the following declaration:

I further declare under penalty of perjury under the laws of California that I am not related to the individual executing this advance health care directive by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the individual's estate upon his or her death under a will now existing or by operation of law.

(signature of witness)

(signature of witness)

PART 6 8
SPECIAL WITNESS REQUIREMENT

~~(6.1)~~

(8.1) The following statement is required only if you are a patient in a skilled nursing facility—a health care facility that provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. The patient advocate or ombudsman must sign the following statement:

STATEMENT OF PATIENT ADVOCATE OR OMBUDSMAN

I declare under penalty of perjury under the laws of California that I am a patient advocate or ombudsman as designated by the State Department of Aging and that I am serving as a witness as required by Section 4675 of the Probate Code.

(date)

(sign your name)

(address)

(print your name)

(city) (state)

1 *SEC. 4. The Legislature finds and declares that Section 2 of*
2 *this act, which adds Part 7.5 (commencing with Section 3250) to*
3 *Division 4 of the Probate Code, imposes a limitation on the public's*
4 *right of access to the writings of public officials and a public*
5 *agency within the meaning of Section 3 of Article I of the California*
6 *Constitution. Pursuant to paragraph (2) of subdivision (b) of*
7 *Section 3 of Article I of the California Constitution, the Legislature*
8 *makes the following findings to demonstrate the interest protected*
9 *by this limitation and the need for protecting that interest:*
10 *In order to protect the identities and other privacy interests of*
11 *those affected by the court investigations, it is necessary that this*
12 *information be kept confidential.*