

**Introduced by Senator Block**

February 26, 2015

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An act to amend Section 1826 of the Probate Code, relating to conservatorships.

LEGISLATIVE COUNSEL'S DIGEST

SB 589, as introduced, Block. Conservatorships.

Existing law regulates the terms and conditions of conservatorships and requires a court investigator, among other things, to determine whether the proposed conservatee is not capable of completing an affidavit of voter registration, as specified, and may be disqualified from voting.

This bill would further specify that the court investigator is required to determine whether the proposed conservatee is not capable of completing an affidavit of voter registration with or without appropriate assistance.

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 1826 of the Probate Code is amended to  
2 read:  
3 1826. Regardless of whether the proposed conservatee attends  
4 the hearing, the court investigator shall do all of the following:  
5 (a) Conduct the following interviews:  
6 (1) The proposed conservatee personally.  
7 (2) All petitioners and all proposed conservators who are not  
8 petitioners.

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

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

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

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

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

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

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

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

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

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

5 (h) (1) Determine whether the proposed conservatee is not  
6 capable of completing an affidavit of voter registration in  
7 accordance with Section 2150 of the Elections ~~Code~~ Code, with  
8 or without appropriate assistance, and may be disqualified from  
9 voting pursuant to Section 2208 of the Elections Code.

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

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

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

18 (C) Completes the affidavit of voter registration with the  
19 assistance of another person pursuant to subdivision (d) of Section  
20 2150 of the Elections Code.

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

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

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

33 (1) Representation by legal counsel.

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

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

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

1 (2) The attorney, if any, for the proposed conservatee.

2 (3) The proposed conservatee.

3 (4) The spouse, registered domestic partner, and relatives within  
4 the first degree of the proposed conservatee who are required to  
5 be named in the petition for appointment of the conservator, unless  
6 the court determines that the mailing will result in harm to the  
7 conservatee.

8 (5) Any other persons as the court orders.

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

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

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

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

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

35 (r) The Judicial Council shall, on or before January 1, 2009,  
36 adopt rules of court and Judicial Council forms as necessary to  
37 implement an expedited procedure to authorize, by court order, a  
38 proposed conservatee's health care provider to disclose confidential  
39 medical information about the proposed conservatee to a court  
40 investigator pursuant to federal medical information privacy

1 regulations promulgated under the Health Insurance Portability  
2 and Accountability Act of 1996.  
3 (s) A superior court shall not be required to perform any duties  
4 imposed pursuant to the amendments to this section enacted by  
5 Chapter 493 of the Statutes 2006 until the Legislature makes an  
6 appropriation identified for this purpose.

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