

AMENDED IN ASSEMBLY MAY 13, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1172

Introduced by Assembly Member Kaloogian

February 28, 1997

An act to amend Section 641 of the Code of Civil Procedure, to add Section 12414.3 to the Insurance Code, to amend Sections 39, 100, 101, 1890, 6560, 6561, 6562, 6570, 6571, 6572, 6573, 8226, 8500, 9000, 11950, 13651, 16246, 16440, 19000, 20123, 20223, and 21350 of, to add Sections 104.5, 1046.5, 1460.1, 9005, 16061.5, 16061.7, and 19150.5 to, to add Part 18 (commencing with Section ~~820~~ and Part 19 (commencing with Section ~~840~~) 820) to Division 2 of, to add Part 3 (commencing with Section 1300) to Division 3 of, to add Article 4 (commencing with Section 6585) to Chapter 5 of Part 3 of Division 6 of, to repeal Sections 2312, 3024, 4948, 8406, 17207, and 19028 of, to repeal Chapter 11 (commencing with Section 2750) of Part 4 of Division 4, and to repeal Article 3 (commencing with Section 7240) of Chapter 3 of Part 1 of Division 7 of, the Probate Code, and to amend Sections 10850, 14100.2, 15610.30, and 15657 of the Welfare and Institutions Code, relating to estate planning, trust, and probate.

LEGISLATIVE COUNSEL'S DIGEST

AB 1172, as amended, Kaloogian. Estates and trusts.

(1) Existing law authorizes the appointment of referees, as specified, to try any or all issues in a civil action or proceeding, whether of fact or law, and to report a statement of decision

thereon or to ascertain a fact necessary to enable a court to determine an action or proceeding. Existing law provides specified grounds upon which a party may object to the appointment of a referee, including the ground that the person does not meet statutory qualifications to be a juror.

This bill would provided an exception to this ground if the statutory qualifications require the referee to be a resident of a particular county in the state.

(2) Existing law generally regulates title insurers.

This bill would provide that the transfer of real property within a trust to any person designated to receive trust property on the death of either the settlor of the trust or another beneficiary of the trust shall not constitute a change of ownership for purposes of coverage of the real property under a title insurance policy created, renewed, or modified on or after January 1, 1998, if, under the policy, a transfer to a beneficiary pursuant to a will or the provisions of existing law regarding interstate succession does not constitute a change of ownership.

(3) Existing law defines a fiduciary for purposes of the Probate Code to mean a personal representative, guardian, conservator, or other legal representative.

This bill would revise this definition to mean prescribed persons who are legal representatives subject to the Probate Code. This bill would also provide that this fiduciary may be liable for all court costs and reasonable attorney's fees incurred as the result of a breach of a fiduciary duty in bad faith.

(4) Existing law prescribes the disposition of community and quasi-community property upon the death of a married person.

This bill would provide that, notwithstanding this provisions, a husband and wife may agree in writing to divide community or quasi-community property on the basis of a non pro rata division of the aggregate value of the property on the basis of a division of each individual item or asset of the property, or partly on each basis. This bill would provide that the transfer of community and quasi-community property prior to, on, or after January 1, 1998, to a revocable trust shall



be presumed to be such an agreement. This bill would make various conforming changes.

~~(5) Existing law provides that the incompetence of a customer does not revoke the authority of a payor or collecting bank to accept, pay, or collect an item, or to account for proceeds of its collection until the bank knows of an adjudication of incompetence and has reasonable opportunity to act on it.~~

~~This bill would authorize a defined peace officer to issue a written certification of fact and serve it upon any legal or natural person or record it with the county recorder if the peace officer declares, under penalty of perjury that, among other things, a person has one or more mental function deficits and is substantially unable to manage his or her financial resources. This bill would provide that, upon service of the certification upon a bank or upon recording, a bank may take specified actions. This bill would provide that this bank would have no liability for refusing to honor specified negotiable instruments. By creating a new crime and by imposing additional duties upon local officials, this bill would impose a state-mandated local program.~~

~~(6)~~

~~(5) Existing law establishes the right to a hearing and notice regarding various actions under the Probate Code.~~

~~This bill would provide for an evidentiary hearing, upon request, on any contested issue of fact in any matter under the code and would provide that specified notices to children under 12 are not required to be mailed to the child if a specified condition is met.~~

~~(7)~~

~~(6) Existing law requires any request for a court order to give a conservator the power to consent to medical treatment to be accompanied by a declaration by a licensed physician or psychologist within the scope of his or her practice.~~

~~This bill would revise this provision to instead prohibit the court order from being issued unless accompanied by this declaration.~~

~~(8)~~



(7) Existing law establishes the right to appeal the making or denial of various orders or judgments specified in the Probate Code.

This bill would revise and recast these provisions, as specified.

~~(9)~~

(8) Existing law prohibits the issuance of letters of guardianship or conservatorship before a copy of the court order appointing the guardian or conservator is mailed to the ward if 14 years of age or older.

This bill would repeal this provision.

~~(10)~~

(9) Existing law provides, with specified exceptions, that if a testator fails to provide in his or her will for a surviving spouse who married the testator after the execution of the will, the omitted spouse is required to receive one-half of the testator’s community and quasi-community property and a share of the separate property of the testator equal in value to that which the spouse would have received if the testator had died intestate, but in no event is this share to be more than one-half the value of the separate property in the estate.

Existing law provides that if a testator fails to provide in his or her will for his or her child born or adopted after the execution of the will, the omitted child is required to receive a share in the estate equal in value to that which the child would have received if the testator had died intestate, except as specified.

This bill would define “estate” for purposes of the above-described provisions to include a decedent’s probate estate and all property held in any revocable trust executed by the decedent prior to the date of marriage.

This bill would provide that if a transferor fails to provide by will or revocable trust for his or her child born or adopted after the execution of the will or revocable trust, the omitted child is required to receive a share in the estate equal in value to that which the child would have received if the transferor had died intestate and had not executed a revocable trust. This bill would also make conforming changes.

This bill would also provide that if a transferor fails to provide by will or revocable trust for this surviving spouse



after the execution of the will or revocable trust, the omitted spouse is required to receive one-half of the testator's community and quasi-community property and a share of the separate property of the testator equal in value to that which the spouse would have received if the testator had died intestate, but in no event is this share to be more than one-half the value of the separate property in the estate. This bill would also make conforming changes.

~~(11)~~

(10) Existing law authorizes the admission of a will to probate notwithstanding the prior admission of another will. Existing law provides that the subsequent will may not affect property previously distributed, but authorizes the court to determine how this will affect property not yet distributed and the provisions of the other will.

This bill would prohibit the proponent of the subsequent will from petitioning to admit the will after specified conditions are met.

~~(12)~~

(11) Existing law specifies the requirements for service of a citation issued to the personal representative of a decedent's estate to appear and show cause why the personal representative should not be removed.

This bill would provide that, upon good cause shown, as specified, service of this citation shall be by mail.

~~(13)~~

(12) Existing law establishes the right of creditors to file a claim, as defined, during the administration of a decedent's estate.

This bill would revise the definition of a claim, as specified and would provide that no action or proceeding may be filed for imposition of a constructive trust or for other specified equitable claim without compliance with the provisions regarding this right.

~~(14)~~

(13) Existing law authorizes a beneficiary to petition to have a court make an equitable partition, allotment, or division of property in an estate when there are two or more beneficiaries, as specified, subject to a specified limitation on this proceeding.



This bill would delete this limitation.

(15)

(14) Existing law imposes a duty upon a trustee to keep the beneficiaries of a trust reasonably informed and requires a trustee to provide, upon request, a beneficiary with a report of prescribed information regarding the trust, trustee, and administration of the trust.

This bill would require a trustee to provide other specified information regarding the trust, as specified.

(16)

(15) Existing law prohibits donative transfers to prescribed persons, except as specified.

This bill would extend the applicability of this prohibition to donative transfers to care custodians of a dependent adult, as defined.

(17)

(16) Existing law prohibits the disclosure of confidential information regarding applicants and recipients of public assistance benefits, with certain exceptions.

This bill would revise these provisions to, among other things, require the State Department of Social Services to exchange specified information with the Department of Motor Vehicles regarding applicants or recipients of aid to the blind who hold a valid driver's license.

(18)

(17) Existing law defines "fiduciary abuse," as specified.

This bill would revise this definition to include a prescribed situation.

~~(19) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~



~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

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

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

1 SECTION 1. Section 641 of the Code of Civil
2 Procedure is amended to read:
3 641. A party may object to the appointment of any
4 person as referee, on one or more of the following
5 grounds:
6 (a) A want of any of the qualifications prescribed by
7 statute to render a person competent as a juror, except a
8 requirement of residence within a particular county in
9 the state.
10 (b) Consanguinity or affinity, within the third degree,
11 to either party, or to an officer of a corporation which is
12 a party, or to any judge of the court in which the
13 appointment shall be made.
14 (c) Standing in the relation of guardian and ward,
15 conservator and conservatee, master and servant,
16 employer and clerk, or principal and agent, to either
17 party; or being a member of the family of either party; or
18 a partner in business with either party; or security on any
19 bond or obligation for either party.
20 (d) Having served as a juror or been a witness on any
21 trial between the same parties for the same cause of
22 action.
23 (e) Interest on the part of such person in the event of
24 the action, or in the main question involved in the action.
25 (f) Having formed or expressed an unqualified
26 opinion or belief as to the merits of the action.
27 (g) The existence of a state of mind in the potential
28 referee evincing enmity against or bias to either party.
29 SEC. 2. Section 12414.31 is added to the Insurance
30 Code, to read:

1 12414.31. The transfer of real property within a trust
 2 created pursuant to Division 9 (commencing with
 3 Section 15000) of the Probate Code to any person
 4 designated to receive trust property on the death of
 5 either the settlor of the trust or another beneficiary of the
 6 trust shall not constitute a change of ownership for
 7 purposes of coverage of the real property under a title
 8 insurance policy created, renewed, or modified on or
 9 after January 1, 1998, if, under the policy, a transfer of real
 10 property to a beneficiary pursuant to a will or pursuant
 11 to Part 2 (commencing with Section 6400) of Division 6
 12 of the Probate Code does not constitute a change of
 13 ownership for purposes of coverage.

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

16 39. "Fiduciary" means personal representative,
 17 trustee, guardian, guardian ad litem, conservator,
 18 attorney-in-fact under a power of attorney, custodian
 19 under the California Uniform Transfer To Minors Act
 20 (Part 9 (commencing with Section 3900), Division 4), or
 21 other legal representative subject to this code.

22 SEC. 4. Section 100 of the Probate Code is amended
 23 to read:

24 100. (a) Upon the death of a married person, one-half
 25 of the community property belongs to the surviving
 26 spouse and the other half belongs to the decedent.

27 (b) Notwithstanding subdivision (a), a husband and
 28 wife may agree in writing to divide their community
 29 property on the basis of a non pro rata division of the
 30 aggregate value of the community property or on the
 31 basis of a division of each individual item or asset of
 32 community property, or partly on each basis. Nothing in
 33 this subdivision shall be construed to require this written
 34 agreement in order to permit or recognize a non pro rata
 35 division of community property.

36 SEC. 5. Section 101 of the Probate Code is amended
 37 to read:

38 101. (a) Upon the death of a married person
 39 domiciled in this state, one-half of the decedent's



1 quasi-community property belongs to the surviving
2 spouse and the other half belongs to the decedent.

3 (b) Notwithstanding subdivision (a), a husband and
4 wife may agree in writing to divide their
5 quasi-community property on the basis of a non pro rata
6 division of the aggregate value of the quasi-community
7 property, or on the basis of a division of each individual
8 item or asset of quasi-community property, or partly on
9 each basis. Nothing in this subdivision shall be construed
10 to require this written agreement in order to permit or
11 recognize a non pro rata division of quasi-community
12 property.

13 SEC. 6. Section 104.5 is added to the Probate Code, to
14 read:

15 104.5. Transfer of community and quasi-community
16 property to a revocable trust shall be presumed to be an
17 agreement, pursuant to Sections 100 and 101, that those
18 assets retain their character in the aggregate for purposes
19 of any division provided by the trust. This section shall
20 apply to all transfers prior to, on, or after January 1, 1998.

21 SEC. 7. Part 18 (commencing with Section 820) is
22 added to Division 2 of the Probate Code, to read:

23

24 PART 18. BREACH OF FIDUCIARY DUTY

25

26 820. A fiduciary subject to this code who breaches a
27 fiduciary duty in bad faith may be liable for all court costs
28 and reasonable attorney’s fees incurred as the result of
29 this breach.

30 ~~SEC. 8. Part 19 (commencing with Section 840) is~~
31 ~~added to Division 2 of the Probate Code, to read:~~

32

33 ~~PART 19. MENTALLY IMPAIRED BANK~~
34 ~~CUSTOMERS~~

35

36 ~~840. (a) For purposes of this section, the following~~
37 ~~definitions shall apply:~~

38 ~~(1) “Depositor” means any bank doing business in this~~
39 ~~state that holds property belonging to the alleged~~
40 ~~mentally impaired individual.~~



1 ~~(2) “Victim” means a person described in a peace~~
2 ~~officer’s declarations, as set forth in subdivision (b).~~

3 ~~(b) A peace officer may issue a written certification of~~
4 ~~fact and serve it upon any legal or natural person, and~~
5 ~~may record that certification with any county recorder if~~
6 ~~the peace officer executes a declaration under penalty of~~
7 ~~perjury certifying that the peace officer believes all of the~~
8 ~~following:~~

9 ~~(1) A person is substantially unable to manage his or~~
10 ~~her financial resources or to resist fraud or undue~~
11 ~~influence.~~

12 ~~(2) That said inability is a result of one or more mental~~
13 ~~function deficits which are listed in subdivision (a) of~~
14 ~~Section 811 and identified by the peace officer in the~~
15 ~~declaration.~~

16 ~~(3) That there is probable cause to believe that a crime~~
17 ~~is being committed against that person.~~

18 ~~(4) That the crime is connected to the person’s alleged~~
19 ~~mental function deficits.~~

20 ~~(c) If the peace officer serves a copy of the written~~
21 ~~certification described in subdivision (b) upon any~~
22 ~~depositor, or records that certification with any county~~
23 ~~recorder, any depositor may for a period of not longer~~
24 ~~than 30 days following the day of execution of the~~
25 ~~certification, treat that peace officer’s certification as~~
26 ~~having the same effect as a declaration by the public~~
27 ~~guardian pursuant to Section 2901 with respect to all real~~
28 ~~and personal property belonging to the person who is~~
29 ~~alleged to be so suffering from mental function deficits,~~
30 ~~except property identified by the peace officer as exempt~~
31 ~~from the application of the written certification.~~

32 ~~(d) If any depositor elects to treat that peace officer’s~~
33 ~~certification as having the same effect as a declaration by~~
34 ~~the public guardian pursuant to Section 2901 both of the~~
35 ~~following shall occur:~~

36 ~~(1) That depositor shall have no liability for refusing,~~
37 ~~during a period of not longer than 30 days following the~~
38 ~~date of execution of the certification, to honor a draft,~~
39 ~~check, or other letter of credit or any other financial~~



1 ~~instrument or agreement or document purportedly~~
2 ~~evincing a change of legal or equitable title.~~

3 ~~(2) Notwithstanding the peace officer's declaration,~~
4 ~~the depositor shall have no liability for honoring a draft,~~
5 ~~check, or other letter of credit or any other financial~~
6 ~~instrument or agreement or document purportedly~~
7 ~~evincing a change of legal or equitable title, beyond the~~
8 ~~liability that the depositor would otherwise have in the~~
9 ~~absence of this section.~~

10 ~~(e) No depositor may treat the peace officer's~~
11 ~~certification as continuing to have the same effect as a~~
12 ~~declaration by the public guardian pursuant to Section~~
13 ~~2901 with respect to any property following the earliest~~
14 ~~of the following events:~~

15 ~~(1) When the depositor is served with a copy of an~~
16 ~~order appointing a temporary or permanent conservator.~~

17 ~~(2) When the depositor is notified that the public~~
18 ~~guardian has filed or presented to anyone a declaration by~~
19 ~~the public guardian pursuant to Section 2901.~~

20 ~~(3) The expiration of 30 days following the date of the~~
21 ~~execution of the certification.~~

22 ~~(f) Upon the expiration of 30 days following the date~~
23 ~~of the execution of the certification, if the depositor has~~
24 ~~not received notice that a temporary or permanent~~
25 ~~conservator has been appointed or that some other legal~~
26 ~~process authorizes the bank to withhold the victim's~~
27 ~~property, the depositor shall honor a draft, check, or other~~
28 ~~letter of credit or any other financial installment or~~
29 ~~agreement or document purportedly evincing a change~~
30 ~~of legal or equitable title to the extent that the depositor~~
31 ~~would do so in the absence of this section.~~

32 ~~(g) The peace officer shall not have the authority to~~
33 ~~renew that certification at the expiration of the five-day~~
34 ~~period described in Section 2901.~~

35 ~~SEC. 9.~~

36 ~~SEC. 8.~~ Section 1046.5 is added to the Probate Code,
37 to read:

38 1046.5. Any contested issue of fact in any matter
39 under this code shall be set for an evidentiary hearing,
40 upon the request of any party.



1 ~~SEC. 10.~~

2 *SEC. 9.* Section 1460.1 is added to the Probate Code,
3 to read:

4 1460.1. Notwithstanding any other provisions of this
5 division, if notice is otherwise required to be mailed to a
6 child who is under the age of 12 years, and proper notice
7 is also given to a parent of the child with whom the child
8 resides, then no notice shall be required to be given to the
9 child.

10 ~~SEC. 11.~~

11 *SEC. 10.* Section 1890 of the Probate Code is amended
12 to read:

13 1890. (a) An order of the court under Section 1880
14 may be included in the order of appointment of the
15 conservator if the order was requested in the petition for
16 the appointment of the conservator or, except in the case
17 of a limited conservator, may be made subsequently upon
18 a petition made, noticed, and heard by the court in the
19 manner provided in this article.

20 (b) In the case of a petition filed under this chapter
21 requesting that the court make an order under this
22 chapter or that the court modify or revoke an order made
23 under this chapter, when the order applies to a limited
24 conservatee, the order may only be made upon a petition
25 made, noticed, and heard by the court in the manner
26 provided by Article 3 (commencing with Section 1820) of
27 Chapter 1.

28 (c) No court order under Section 1880, whether issued
29 as part of an order granting the original petition for
30 appointment of a conservator or issued subsequent
31 thereto, may be granted unless supported by a
32 declaration, filed at or before the hearing on the request,
33 executed by a licensed physician, or a licensed
34 psychologist within the scope of his or her licensure, and
35 stating that the proposed conservatee or the conservatee,
36 as the case may be, lacks the capacity to give an informed
37 consent for any form of medical treatment and the
38 reasons therefor. Nothing in this section shall be
39 construed to expand the scope of practice of psychologists
40 as set forth in the Business and Professions Code.



1 ~~SEC. 12.~~

2 *SEC. 11.* Part 3 (commencing with Section 1300) is
3 added to Division 3 of the Probate Code, to read:

4

5

PART 3. APPEALS

6

7 1300. (a) In all proceedings governed by this code, an
8 appeal may be taken from the making of, or the refusal
9 to make, any of the following orders:

10 (1) Granting or revoking letters of guardianship,
11 conservatorship, or of administration, except letters of
12 temporary guardianship, temporary conservatorship, or
13 letters of special administration.

14 (2) Directing, authorizing, approving, or confirming
15 the sale, lease, encumbrance, grant of an option,
16 purchase, conveyance, or exchange of property.

17 (3) Settling an account of a fiduciary.

18 (4) Authorizing, instructing, or directing a fiduciary,
19 or approving or confirming the acts of a fiduciary.

20 (5) Directing or allowing payment of a debt, claim, or
21 cost.

22 (6) Fixing, authorizing, allowing, or directing
23 payment of compensation or expenses of an attorney.

24 (7) Fixing, directing, authorizing, or allowing
25 payment of the compensation or expenses of a fiduciary.

26 (8) Surcharging, removing, or discharging a fiduciary.

27 (9) Determining whether an action constitutes a
28 contest under Chapter 2 (commencing with Section
29 21320) of Part 3 of Division 11.

30 (10) Transferring the property of the estate to a
31 fiduciary in another jurisdiction.

32 (11) Allowing or denying a petition of the fiduciary to
33 resign.

34 (12) Discharging a surety on the bond of a fiduciary.

35 (b) With respect to guardianships, conservatorships,
36 and other protective proceedings, the grant or refusal to
37 grant the following additional orders is also appealable:

38 (1) Granting permission to the guardian or
39 conservator to fix the residence of the ward or
40 conservatee at a place not within this state.



1 (2) Directing, authorizing, approving, or modifying
2 payments whether support, maintenance, or education of
3 the ward or conservatee or a person legally entitled to
4 support, maintenance, or education from the ward or
5 conservatee.

6 (3) Granting or denying a petition under Section 2423
7 or under Article 10 (commencing with Section 2580) of
8 Chapter 6 of Part 4 of Division 4.

9 (4) Affecting the legal capacity of the conservatee
10 pursuant to Chapter 4 (commencing with Section 1870)
11 of Part 3 of Division 4.

12 (5) Adjudicating the merits of a claim under Article 5
13 (commencing with Section 2500) of Article 6
14 (commencing with Section 2520) of Chapter 6 of Part 4
15 of Division 4.

16 (6) Granting or denying a petition under Chapter 3
17 (commencing with Section 3100) of Part 6 of Division 4.

18 (c) With respect to a power of attorney, the grant or
19 refusal to grant the following additional orders is also
20 appealable:

21 (1) Any final order under Section 4941, except an
22 order pursuant to subdivision (c) of Section 4941.

23 (2) Any final order under Section 4942, except an
24 order pursuant to subdivision (c) of Section 4942.

25 (3) An order dismissing the petition or denying a
26 motion to dismiss under Section 4944.

27 (d) With respect to a decedent's estate, the grant or
28 refusal to grant the following additional orders is also
29 appealable:

30 (1) Admitting a will to probate or revoking the
31 probate of a will.

32 (2) Setting aside a small estate under Section 6609.

33 (3) Setting apart a probate homestead or property
34 claimed to be exempt from enforcement of a money
35 judgment.

36 (4) Granting, modifying, or terminating a family
37 allowance.

38 (5) Adjudicating the merits of a claim under Chapter
39 11 (commencing with Section 9860) of Part 5 of Division
40 7.



1 (6) Determining the priority of debts under Chapter
2 3 (commencing with Section 11440) of Part 9 of Division
3 7.

4 (7) Determining heirship, succession, entitlement, or
5 the persons to whom distribution should be made.

6 (8) Directing distribution of property. Orders on
7 petition, allotment, or other division of property may be
8 appealed from an order for distribution.

9 (9) Determining that property passes to, or
10 confirming that property belongs to, the surviving spouse
11 under Section 13656.

12 (10) Authorizing a personal representative to invest or
13 reinvest surplus money under Section 9732.

14 (e) With respect to a trust, the grant or denial of the
15 following additional orders is also appealable:

16 (1) Any final order under Chapter 3 (commencing
17 with Section 17200) of Part 5 of Division 9, except the
18 following:

19 (A) Compelling the trustee to submit an account or
20 report acts as trustee.

21 (B) Accepting the resignation of the trustee.

22 (2) Any final order under Chapter 2 (commencing
23 with Section 19020) of Part 8 of Division 9.

24 (3) Any final order under Part 1 (commencing with
25 Section 20100) and Part 2 (commencing with Section
26 20200) of Division 10.

27 1301. (a) Except as provided in subdivisions (b), (c),
28 and (d), an appeal pursuant to Section 1300 stays the
29 operation and effect of the judgment or order.

30 (b) Notwithstanding that an appeal is taken from the
31 judgment or order, for the purpose of preventing injury
32 or loss to a person or property, the trial court may direct
33 the exercise of the powers of the fiduciary, or may appoint
34 a temporary guardian or conservator of the person or
35 estate, or both, or special administrator, to exercise the
36 powers, from time to time, as if no appeal were pending.
37 All acts of the fiduciary pursuant to the directions of the
38 court made under this subdivision are valid, irrespective
39 of the result of the appeal.



1 (c) In proceedings for guardianship of the person,
2 Section 917.7 of the Code of Civil Procedure shall apply.

3 (d) An appeal shall not stay the operation and effect of
4 the order if the court requires an undertaking, as
5 provided in Section 917.9 of the Code of Civil Procedure,
6 and the undertaking is not given.

7 1302. If an order appointing a fiduciary is reversed on
8 appeal for error, all acts of the fiduciary performed after
9 issuance of letters and prior to the reversal are as valid as
10 though the order were affirmed and the person
11 appointed is not liable for any otherwise proper act done
12 in good faith before the reversal, nor is any transaction
13 void by reason of the reversal if entered into with a third
14 person dealing in good faith and for value.

15 1303. Notwithstanding the repeal of former Section
16 1297 by Chapter 1199 of the Statutes of 1988, an appeal
17 may be taken from an order or the refusal to make an
18 order fixing an inheritance tax or determining that none
19 is due.

20 ~~SEC. 13.~~

21 *SEC. 12.* Section 2312 of the Probate Code is repealed.

22 ~~SEC. 13.5.~~

23 *SEC. 13.* Section 3024 of the Probate Code is repealed.

24 *SEC. 14.* Chapter 11 (commencing with Section 2750)
25 of Part 4 of Division 4 of the Probate Code is repealed.

26 *SEC. 15.* Section 4948 of the Probate Code is repealed.

27 *SEC. 16.* Section 6560 of the Probate Code is amended
28 to read:

29 6560. Except as provided in Section 6561, if a
30 transferor fails to provide by will or revocable trust for the
31 transferor’s surviving spouse who married the transferor
32 after the execution of the will or revocable trust, the
33 omitted spouse shall receive a share in the transferor’s
34 estate consisting of the following property in the estate:

35 (a) The one-half of the community property that
36 belongs to the transferor under Section 100.

37 (b) The one-half of the quasi-community property
38 that belongs to the transferor under Section 101.

39 (c) A share of the separate property of the transferor
40 equal in value to that which the spouse would have



1 received if the transferor had died intestate and had not
2 executed a revocable trust, but in no event is the share to
3 be more than one-half the value of the separate property
4 in the estate.

5 SEC. 17. Section 6561 of the Probate Code is amended
6 to read:

7 6561. The spouse does not receive a share of the estate
8 under Section 6560 if any of the following is established:

9 (a) The transferor's failure to provide for the spouse in
10 the will or revocable trust was intentional and that
11 intention appears from either the will or the revocable
12 trust.

13 (b) The transferor provided for the spouse by transfer
14 outside the will or revocable trust and the intention that
15 the transfer be in lieu of a provision in the will or
16 revocable trust is shown by statements of the transferor
17 or from the amount of the transfer or by other evidence.

18 (c) The spouse made a valid agreement waiving the
19 right to share in the transferor's estate.

20 SEC. 18. Section 6562 of the Probate Code is amended
21 to read:

22 6562. (a) Except as provided in subdivision (b), in
23 satisfying a share provided by this article:

24 (1) The share shall first be taken from the transferor's
25 estate not disposed of by will or trust, if any.

26 (2) If that is not sufficient, so much as may be
27 necessary to satisfy the share shall be taken from all
28 beneficiaries of the estate in proportion to the value they
29 may respectively receive. This value shall be determined
30 as of the date of the transferor's death.

31 (b) If the obvious intention of the transferor in relation
32 to some specific devise or other provision for disposition
33 of the estate would be defeated by the application of
34 subdivision (a), the specific devise or provision may be
35 exempted from the apportionment under subdivision
36 (a), and a different apportionment, consistent with the
37 intention of the transferor, may be adopted.

38 SEC. 19. Section 6570 of the Probate Code is amended
39 to read:



1 6570. Except as provided in Section 6571, if a
2 transferor fails to provide in the will for a child of the
3 transferor born or adopted after the execution of the will,
4 the omitted child shall receive a share in the estate equal
5 in value to that which the child would have received if the
6 transferor had died intestate and had not executed a
7 revocable trust.

8 SEC. 20. Section 6571 of the Probate Code is amended
9 to read:

10 6571. A child does not receive a share of the estate
11 under Section 6570 if any of the following is established:

12 (a) The transferor’s failure to provide for the child in
13 the will or revocable trust was intentional and that
14 intention appears from either the will or revocable trust.

15 (b) At the time of execution of the will or revocable
16 trust, the transferor had one or more children and
17 devised or otherwise directed the disposition of
18 substantially all the estate to the other parent of the
19 omitted child.

20 (c) The transferor provided for the child by transfer
21 outside the will or revocable trust and the intention that
22 the transfer be in lieu of a provision in the will or
23 revocable trust is shown by statements of the transferor
24 or from the amount of the transfer or by other evidence.

25 SEC. 21. Section 6572 of the Probate Code is amended
26 to read:

27 6572. If at the time of execution of the will the
28 transferor fails to provide in the will or revocable trust for
29 a living child solely because the transferor believes the
30 child to be dead or is unaware of the birth of the child, the
31 child shall receive a share in the estate equal in value to
32 that which the child would have received if the testator
33 had died intestate and had executed no revocable trust.

34 SEC. 22. Section 6573 of the Probate Code is amended
35 to read:

36 6573. (a) Except as provided in subdivision (b), in
37 satisfying a share provided by this article:

38 (1) The share shall first be taken from the transferor’s
39 estate not disposed of by will or by revocable trust, if any.



1 (2) If that is not sufficient, so much as may be
 2 necessary to satisfy the share shall be taken from all
 3 beneficiaries of the estate in proportion to the value they
 4 may respectively receive. Such value shall be determined
 5 as of the date of the transferor’s death.

6 (b) If the obvious intention of the transferor in relation
 7 to some specific devise or other provision for disposition
 8 of the estate would be defeated by the application of
 9 subdivision (a), the specific devise or provision may be
 10 exempted from the apportionment under subdivision
 11 (a), and a different apportionment, consistent with the
 12 intention of the transferor, may be adopted.

13 SEC. 23. Article 4 (commencing with Section 6585) is
 14 added to Chapter 5 of Part 3 of Division 6 of the Probate
 15 Code, to read:

16

17

Article 4. _____

18

19 6585. “Estate” as used in this chapter shall include a
 20 decedent’s probate estate and all property held in any
 21 revocable trust executed by the decedent prior to the
 22 date of marriage.

23 SEC. 24. Article 3 (commencing with Section 7240) of
 24 Chapter 3 of Division 7 of the Probate Code is repealed.

25 SEC. 25. Section 8226 of the Probate Code is amended
 26 to read:

27 8226. (a) If no person contests the validity of a will or
 28 petitions for revocation of probate of the will within the
 29 time provided in this chapter, admission of the will to
 30 probate is conclusive, subject to Section 8007.

31 (b) Subject to subdivision (c), a will may be admitted
 32 to probate notwithstanding prior admission to probate of
 33 another will or prior distribution of property in the
 34 proceeding. The will may not affect property previously
 35 distributed, but the court may determine how any
 36 provision of the will affects property not yet distributed
 37 and how any provision of the will affects provisions of
 38 another will.

39 (c) If the proponent of a will has received notice of a
 40 petition for probate or a petition for letters of



1 administration for a general personal representative, the
2 proponent of the will may petition for probate of the will
3 only within the later of either of the following time
4 periods:

5 (1) One hundred twenty days after issuance of the
6 order admitting the first will to probate or determining
7 the decedent to be intestate.

8 (2) Thirty days after the proponent of the will first
9 obtains knowledge of the will.

10 SEC. 26. Section 8406 of the Probate Code is repealed.

11 SEC. 27. Section 8500 of the Probate Code is amended
12 to read:

13 8500. (a) Any interested person may petition for
14 removal of the personal representative from office. A
15 petition for removal may be combined with a petition for
16 appointment of a successor personal representative
17 under Article 7 (commencing with Section 8520). The
18 petition shall state facts showing cause for removal.

19 (b) On a petition for removal, or if the court otherwise
20 has reason to believe from the court’s own knowledge or
21 from other credible information, whether on the
22 settlement of an account or otherwise, that there are
23 grounds for removal, the court shall issue a citation to the
24 personal representative to appear and show cause why
25 the personal representative should not be removed. The
26 court may suspend the powers of the personal
27 representative and may make such orders as are
28 necessary to deal with the property pending the hearing.

29 (c) Any interested person may appear at the hearing
30 and file a written declaration showing that the personal
31 representative should be removed or retained. The
32 personal representative may demur to or answer the
33 declaration. The court may compel the attendance of the
34 personal representative and may compel the personal
35 representative to answer questions, on oath, concerning
36 the administration of the estate. Failure to attend or
37 answer is cause for removal of the personal
38 representative from office.

39 (d) The issues shall be heard and determined by the
40 court. If the court is satisfied from the evidence that the



1 citation has been duly served and cause for removal exists,
2 the court shall remove the personal representative from
3 office.

4 (e) A citation issued pursuant to this section shall be
5 served in accordance with Section 1242, except that, on
6 good cause shown, the court may order that service of the
7 citation shall be by mail, to the last known address of the
8 personal representative acting in propria persona, or to
9 the last known address of the attorney of record for the
10 personal representative if the personal representative has
11 an attorney of record. “Good cause” may be shown by an
12 affidavit or declaration from the petitioner for removal,
13 or any interested person, including any court employee,
14 that due and diligent efforts have been made to serve the
15 personal representative with a copy of the petition and
16 citation within the time allowed by law, but that those
17 efforts have been unsuccessful.

18 SEC. 28. Section 9000 of the Probate Code is amended
19 to read:

20 9000. As used in this division:

21 (a) “Claim” means a demand for payment for any of
22 the following, whether due, not due, accrued or not
23 accrued, or contingent, and whether liquidated or
24 unliquidated:

25 (1) Liability of the decedent, whether arising in
26 contract, tort, or otherwise.

27 (2) Liability for taxes incurred before the decedent’s
28 death, whether assessed before or after the decedent’s
29 death, other than property taxes and assessments secured
30 by real property liens.

31 (3) Liability of the estate for funeral expenses of the
32 decedent.

33 (4) Liability for any claim that decedent died bound
34 by a contract to make a will, trust, or other promise to
35 leave property on decedent’s death, whether the claim is
36 for specific property or otherwise.

37 (b) “Claim” does not include a dispute regarding a
38 claim that decedent did not have title to specific property
39 alleged to be included in the decedent’s estate.



1 SEC. 29. Section 9005 is added to the Probate Code,
2 to read:

3 9005. No action or proceeding may be filed for
4 imposition of a constructive trust or other equitable claim
5 described in paragraph (4) of subdivision (a) of Section
6 9000 against property passing through the estate without
7 complying with this part.

8 SEC. 30. Section 11950 of the Probate Code is
9 amended to read:

10 11950. If two or more beneficiaries are entitled to the
11 distribution of undivided interests in property and have
12 not agreed among themselves to a partition, allotment, or
13 other division of the property, any of them, or the
14 personal representative at the request of any of them,
15 may petition the court to make a partition, allotment, or
16 other division of the property that will be equitable and
17 will avoid the distribution of undivided interests.

18 SEC. 31. Section 13651 of the Probate Code is
19 amended to read:

20 13651. (a) A petition filed pursuant to Section 13650
21 shall allege that administration of all or a part of the estate
22 of the deceased spouse is not necessary for the reason that
23 all or a part of the estate is property passing to the
24 surviving spouse, and shall set forth all of the following
25 information:

26 (1) If proceedings for the administration of the estate
27 are not pending, the facts necessary to determine the
28 county in which the estate of the deceased spouse may be
29 administered.

30 (2) A description of the property of the deceased
31 spouse which the petitioner alleges is property passing to
32 the surviving spouse, including the trade or business
33 name of any property passing to the surviving spouse that
34 consists of an unincorporated business or an interest in an
35 unincorporated business which the deceased spouse was
36 operating or managing at the time of death, subject to any
37 written agreement between the deceased spouse and the
38 surviving spouse providing for a non pro rata division of
39 the aggregate value of the community property assets or
40 quasi-community assets, or both.



1 (3) The facts upon which the petitioner bases the
2 allegation that all or a part of the estate of the deceased
3 spouse is property passing to the surviving spouse.

4 (4) A description of any interest in the community
5 property or quasi-community property, or both, which
6 the petitioner requests the court to confirm to the
7 surviving spouse as belonging to the surviving spouse
8 pursuant to Section 100 or 101, subject to any written
9 agreement between the deceased spouse and the
10 surviving spouse providing for a non pro rata division of
11 the aggregate value of the community property assets or
12 quasi-community assets, or both.

13 (5) The name, age, address, and relation to the
14 deceased spouse of each heir and devisee of the deceased
15 spouse, the names and addresses of all persons named as
16 executors of the will of the deceased spouse, and the
17 names and addresses of all persons appointed as personal
18 representatives of the deceased spouse, which are known
19 to the petitioner.

20 (6) Disclosure of any written agreement between the
21 deceased spouse and the surviving spouse providing for
22 a non pro rata division of the aggregate value of the
23 community property assets or quasi-community property
24 assets, or both, or the affirmative statement that this
25 agreement does not exist. If a dispute arises as to the
26 division of the community property assets or
27 quasi-community property assets, or both, pursuant to
28 this agreement, the court shall determine the division
29 subject to terms and conditions or other remedies that
30 appear equitable under the circumstances of the case,
31 taking into account the rights of all interested persons.

32 (b) If the petitioner bases the allegation that all or part
33 of the estate of the deceased spouse is property passing to
34 the surviving spouse upon the will of the deceased spouse,
35 a copy of the will shall be attached to the petition.

36 (c) If the petitioner bases the description of the
37 property of the deceased spouse passing to the surviving
38 spouse or the property to be confirmed to the surviving
39 spouse, or both, upon a written agreement between the
40 deceased spouse and the surviving spouse providing for



1 a non pro rata division of the aggregate value of the
2 community property assets or quasi-community assets, or
3 both, a copy of the agreement shall be attached to the
4 petition.

5 SEC. 32. Section 16061.5 is added to the Probate Code,
6 to read:

7 16061.5. When a revocable trust or any portion
8 thereof becomes irrevocable because of the death of one
9 or more of the settlors of the trust, the trustee shall, on
10 request, provide a true and complete copy of the terms
11 of the trust to each beneficiary of the trust and to each
12 heir of a deceased settlor. The trustee shall, for purposes
13 of this section, rely upon any final judicial determination
14 of heirship. However, the trustee shall have discretion to
15 make a good faith determination by any reasonable
16 means of the heirs of a deceased settlor in the absence of
17 a final judicial determination of heirship.

18 SEC. 33. Section 16061.7 is added to the Probate Code,
19 to read:

20 16061.7. (a) A trustee shall serve a notice described
21 in this section in either of the following cases:

22 (1) When a revocable trust or any portion thereof
23 becomes irrevocable because of the death of one or more
24 of the settlors of the trust or for any other reason.

25 (2) When there is a change of trustees of an
26 irrevocable trust.

27 (b) The notification of trustee required by subdivision
28 (a) shall be served on each of the following:

29 (1) Each beneficiary of the trust or the irrevocable
30 portion of the trust, subject to the limitations of Section
31 15804.

32 (2) If the event which requires trustee notification is
33 the death of a settlor, to each heir of the deceased settlor.

34 (3) If the trust is a charitable trust subject to the
35 supervision of the Attorney General, to the Attorney
36 General.

37 (c) The notification by trustee shall be served in the
38 manner provided in Part 2 (commencing with Section
39 1200) of Division 3.



1 (d) The notification by trustee shall be served not later
2 than 30 days following the occurrence of the event
3 requiring service of the trustee notification, or 30 days
4 following the trustee's becoming aware of the existence
5 of a person entitled to receive notification by trustee, if
6 that person was not known to the trustee on the
7 occurrence of the event requiring service of the trustee
8 notification. If there is a vacancy in the office of the
9 trustee on the date of the occurrence of the event
10 requiring service of the notification by trustee, or if that
11 event causes a vacancy, then the 30-day period for service
12 of the notification by trustee commences on the date the
13 new trustee commences to serve as trustee.

14 (e) The notification by trustee shall contain the
15 following information:

16 (1) The identity of the settlor or settlors of the trust
17 and the date of execution of the trust instrument.

18 (2) The name, mailing address and telephone number
19 of each trustee of the trust.

20 (3) The address of the physical location where the
21 principal place of administration of the trust is located.

22 (4) Any additional information which may be required
23 by the terms of the trust instrument.

24 (5) A notification that the recipient is entitled, upon
25 reasonable request to the trustee, to receive from the
26 trustee a true and complete copy of the terms of the trust.

27 (f) A trustee who fails to serve the notification by
28 trustee as required by this section shall be responsible for
29 all damages, including attorney's fees and costs, caused by
30 the failure; provided, however, that this subdivision shall
31 not apply in any case where a trustee makes a good faith
32 effort to comply with this section. A trustee shall, for
33 purposes of this section, rely upon any final judicial
34 determination of heirship; but the trustee shall have
35 discretion to make a good faith determination by any
36 reasonable means of the heirs of a deceased settlor in the
37 absence of a final judicial determination of heirship
38 known to the trustee.

1 (g) Any waiver by a settlor of the requirement of
2 serving the notification by trustee required by this section
3 is against public policy and shall be void.

4 SEC. 34. Section 16246 of the Probate Code is
5 amended to read:

6 16246. The trustee has the power to effect distribution
7 of property and money in divided or undivided interests
8 and to adjust resulting differences in valuation. A
9 distribution in kind may be made pro rata or non pro rata,
10 and may be made pursuant to any written agreement
11 providing for a non pro rata division of the aggregate
12 value of the community property assets or
13 quasi-community property assets, or both.

14 SEC. 35. Section 16440 of the Probate Code is
15 amended to read:

16 16440. (a) If the trustee commits a breach of trust,
17 the trustee is chargeable with any of the following that is
18 appropriate under the circumstances:

19 (1) Any loss or depreciation in value of the trust estate
20 resulting from the breach of trust, with interest;
21 provided, however, if the trustee has, in bad faith,
22 wrongfully taken, concealed, or disposed of the property
23 in or belonging to the trust, the loss shall be deemed to be
24 twice the value of the property.

25 (2) Any profit made by the trustee through the breach
26 of trust, with interest.

27 (3) Any profit that would have accrued to the trust
28 estate if the loss of profit is the result of the breach of trust.

29 (b) If the trustee has acted reasonably and in good
30 faith under the circumstances as known to the trustee, the
31 court, in its discretion, may excuse the trustee in whole or
32 in part from liability under subdivision (a) if it would be
33 equitable to do so.

34 SEC. 36. Section 17207 of the Probate Code is
35 repealed.

36 SEC. 37. Section 19000 of the Probate Code is
37 amended to read:

38 19000. As used in this part:

39 (a) "Claim" means a demand for payment for any of
40 the following, whether due, not due, accrued or not



1 accrued, or contingent, and whether liquidated or
2 unliquidated:

3 (1) Liability of the deceased settlor, whether arising in
4 contract, tort, or otherwise.

5 (2) Liability for taxes incurred before the deceased
6 settlor's death, whether assessed before or after the
7 deceased settlor's death, other than property taxes and
8 assessments secured by real property liens.

9 (3) Liability for the funeral expenses of the deceased
10 settlor.

11 (4) Liability for any claim that decedent is bound by
12 a contract to make a will, trust, or other promise to leave
13 property on decedent's death, whether for specific
14 property or otherwise.

15 (b) "Claim" does not include a dispute regarding a
16 claim that decedent did not have title to specific property
17 alleged to be included in the trust estate.

18 (c) "Claimant" means a person who may have a
19 claim, as defined in subdivision (a), against trust property
20 and who has filed a timely claim pursuant to Section
21 19100.

22 (d) "Trust" means a trust described in Section 18200,
23 or, if a portion of a trust, that portion that remained
24 subject to the power of revocation at the deceased
25 settlor's death.

26 (e) "Deceased settlor" means a deceased person who,
27 at the time of his or her death, held the power to revoke
28 the trust in whole or in part.

29 (f) "Debts" means all claims, as defined in subdivision
30 (a), all expenses of administration, and all other proper
31 charges against the trust estate, including taxes.

32 SEC. 38. Section 19150.5 is added to the Civil Code, to
33 read:

34 19150.5. No action or proceeding can be filed for
35 imposition of a constructive trust or other equitable claim
36 described in subdivision (a) against property passing
37 through the trust estate without complying with
38 paragraph (4) of this part.

39 SEC. 39. Section 19028 of the Probate Code is
40 repealed.



1 SEC. 40. Section 20123 of the Probate Code is
2 amended to read:

3 20123. (a) The court, upon making a determination
4 as provided in this article, shall make an order:

5 (1) Directing the personal representative to charge
6 the prorated amounts against the persons against whom
7 an estate tax has been prorated insofar as the personal
8 representative is in possession of any property or interests
9 of the persons against whom the charge may be made.

10 (2) Summarily directing all other persons against
11 whom an estate tax has been prorated to make payment
12 of the prorated amounts to the personal representative.

13 (b) A court order made under this section is a
14 judgment that may be enforced against the persons
15 against whom an estate tax has been prorated.

16 SEC. 41. Section 20223 of the Probate Code is
17 amended to read:

18 20223. (a) The court, upon making a determination
19 as provided in this article, shall make an order:

20 (1) Directing the trustee to charge the prorated
21 amounts against the transferees against whom the
22 generation-skipping transfer tax has been prorated
23 insofar as the trustee is in possession of any property or
24 interests of the transferees against whom the charge may
25 be made.

26 (2) Summarily directing all other transferees against
27 whom the generation-skipping transfer tax has been
28 prorated to make payment of the prorated amounts to the
29 trustee.

30 (b) A court order made under this section is a
31 judgment that may be enforced against the persons
32 against whom a generation-skipping transfer tax has been
33 prorated.

34 SEC. 42. Section 21350 of the Probate Code is
35 amended to read:

36 21350. (a) Except as provided in Section 21351, no
37 provision, or provisions, of any instrument shall be valid
38 to make any donative transfer to any of the following:

39 (1) The person who drafted the instrument.



1 (2) A person who is related by blood or marriage to, is
2 a cohabitant with, or is an employee of, the person who
3 drafted the instrument.

4 (3) Any partner or shareholder of any law partnership
5 or law corporation in which the person described in
6 paragraph (1) has an ownership interest, and any
7 employee of any such law partnership or law corporation.

8 (4) Any person who has a fiduciary relationship with
9 the transferor, including, but not limited to, a conservator
10 or trustee, who transcribes the instrument or causes it to
11 be transcribed.

12 (5) A person who is related by blood or marriage to, is
13 a cohabitant with, or is an employee of a person who is
14 described in paragraph (4).

15 (6) A care custodian of a dependent adult.

16 (b) For purposes of this section, “a person who is
17 related by blood or marriage” to a person means all of the
18 following:

19 (1) The person’s spouse or predeceased spouse.

20 (2) Relatives within the third degree of the person and
21 of the person’s spouse.

22 (3) The spouse of any person described in paragraph
23 (2).

24 In determining any relationship under this subdivision,
25 Sections 6406, 6407, and Chapter 2 (commencing with
26 Section 6450) of Part 2 of Division 6 shall be applicable.

27 (c) For purposes of this section, the term “dependent
28 adult” has the meaning set forth in Section 15610.23 of
29 Welfare and Institutions Code and also includes persons
30 who are older than age 64. The term “care custodian” has
31 the meaning set forth in Section 15610.17 of Welfare and
32 Institutions Code.

33 SEC. 43. Section 10850 of the Welfare and Institutions
34 Code is amended to read:

35 10850. (a) Except as otherwise provided in this
36 section, all applications and records concerning any
37 individual made or kept by any public officer or agency
38 in connection with the administration of any provision of
39 this code relating to any form of public social services for
40 which grants-in-aid are received by this state from the



1 United States government shall be confidential, and shall
2 not be open to examination for any purpose not directly
3 connected with the administration of that program, or
4 any investigation, prosecution, or criminal or civil
5 proceeding conducted in connection with the
6 administration of any such program. The disclosure of any
7 information which identifies by name or address any
8 applicant for or recipient of these grants-in-aid to any
9 committee or legislative body is prohibited, except as
10 provided in subdivision (b).

11 (b) Except as otherwise provided in this section, no
12 person shall publish or disclose or permit or cause to be
13 published or disclosed any list of persons receiving public
14 social services. Any county welfare department in this
15 state may release lists of applicants for, or recipients of,
16 public social services, to any other county welfare
17 department or the State Department of Social Services,
18 and these lists or any other records shall be released when
19 requested by any county welfare department or the State
20 Department of Social Services. These lists or other
21 records shall only be used for purposes directly connected
22 with the administration of public social services. Except
23 for those purposes, no person shall publish, disclose, or use
24 or permit or cause to be published, disclosed, or used any
25 confidential information pertaining to an applicant or
26 recipient.

27 Any county welfare department and the State
28 Department of Social Services shall provide any
29 governmental entity which is authorized by law to
30 conduct an audit or similar activity in connection with the
31 administration of public social services, including any
32 committee or legislative body so authorized, with access
33 to any public social service applications and records
34 described in subdivision (a) to the extent of the
35 authorization. Those committees, legislative bodies and
36 other entities may only request or use these records for
37 the purpose of investigating the administration of public
38 social services, and shall not disclose the identity of any
39 applicant or recipient except in the case of a criminal or



1 civil proceeding conducted in connection with the
2 administration of public social services.

3 However, this section shall not prohibit the furnishing
4 of this information to other public agencies to the extent
5 required for verifying eligibility or for other purposes
6 directly connected with the administration of public
7 social services, or to county superintendents of schools or
8 superintendents of school districts only as necessary for
9 the administration of federally assisted programs
10 providing assistance in cash or in-kind or services directly
11 to individuals on the basis of need. Any person knowingly
12 and intentionally violating the provisions of this
13 subdivision is guilty of a misdemeanor.

14 Further, in the context of a petition for the
15 appointment of a conservator for a person who is
16 receiving or has received aid from a public agency, as
17 indicated above, or in the context of a criminal
18 prosecution for a violation of Section 368 of the Penal
19 Code:

20 (1) An adult Protective Services employee or
21 Ombudsman may answer truthfully at any proceeding
22 related to such petition or prosecution when asked if he
23 or she is aware of information that he or she believes is
24 related to the legal mental capacity of that aid recipient,
25 or the need for a conservatorship for that aid recipient. If
26 the Adult Protective Services employee or Ombudsman
27 states that he or she is aware of such information, the
28 court may order the Adult Protective Services employee
29 or Ombudsman to testify about his or her observations
30 and to disclose all relevant agency records, and

31 (2) The court may order the Adult Protective Services
32 employee or Ombudsman to testify about his or her
33 observations and to disclose any relevant agency records
34 if the court has other independent reason to believe that
35 the Adult Protective Services employee or Ombudsman
36 has information that would facilitate the resolution of the
37 matter.

38 (c) The State Department of Social Services shall
39 inform the Department of Motor Vehicles of the names,
40 birth dates, and addresses of all applicants or recipients of



1 aid to the blind. The Department of Motor Vehicles, upon
2 receipt of such information, shall inform the State
3 Department of Social Services of any such applicant or
4 recipient of aid to the blind who holds a valid state driver's
5 license.

6 (d) The State Department of Social Services may
7 make rules and regulations governing the custody, use,
8 and preservation of all records, papers, files, and
9 communications pertaining to the administration of the
10 laws relating to public social services under their
11 jurisdiction. The rules and regulations shall be binding on
12 all departments, officials and employees of the state, or of
13 any political subdivision of the state and may provide for
14 giving information to or exchanging information with
15 agencies, public or political subdivisions of the state, and
16 may provide for giving information to or exchanging
17 information with agencies, public or private, which are
18 engaged in planning, providing or securing social services
19 for or in behalf of recipients or applicants; and for making
20 case records available for research purposes, provided,
21 that the research will not result in the disclosure of the
22 identity of applicants for or recipients of public social
23 services.

24 (e) Any person, including every public officer and
25 employee, who knowingly secures or possesses, other
26 than in the course of official duty, an official list or a list
27 compiled from official sources, published or disclosed in
28 violation of this section, of persons who have applied for
29 or who have been granted any form of public social
30 services for which state or federal funds are made
31 available to the counties is guilty of a misdemeanor.

32 (f) This section shall not be construed to prohibit an
33 employee of a county welfare department from disclosing
34 confidential information concerning a public social
35 services applicant or recipient to a state or local law
36 enforcement agency investigating or gathering
37 information regarding a criminal act committed in a
38 welfare department office, a criminal act against any
39 county or state welfare worker, or any criminal act
40 witnessed by any county or state welfare worker while



1 involved in the administration of public social services at
2 any location. Further, this section shall not be construed
3 to prohibit an employee of a county welfare department
4 from disclosing confidential information concerning a
5 public social services applicant or recipient to a state or
6 local law enforcement agency investigating or gathering
7 information regarding a criminal act intentionally
8 committed by the applicant or recipient against any
9 off-duty county or state welfare worker in retaliation for
10 an act performed in the course of the welfare worker's
11 duty when the person committing the offense knows or
12 reasonably should know that the victim is a state or
13 county welfare worker. These criminal acts shall include
14 only those which are in violation of state or local law.
15 Disclosure of confidential information pursuant to this
16 subdivision shall be limited to the applicant's or
17 recipient's name, physical description, and address.

18 (g) The provisions of this section shall be operative
19 only to the extent permitted by federal law and shall not
20 apply to, but exclude, Chapter 7 (commencing with
21 Section 14000) of this division, entitled "Basic Health
22 Care", and for which a grant-in-aid is received by the
23 state under Title XIX of the Social Security Act.

24 SEC. 44. Section 14100.2 of the Welfare and
25 Institutions Code is amended to read:

26 14100.2. (a) All types of information, whether
27 written or oral, concerning a person, made or kept by any
28 public officer or agency in connection with the
29 administration of any provision of this chapter, Chapter
30 8 (commencing with Section 14200), or Chapter 8.7
31 (commencing with Section 14520) and for which a
32 grant-in-aid is received by this state from the United
33 States government pursuant to Title XIX of the Social
34 Security Act shall be confidential, and shall not be open
35 to examination other than for purposes directly
36 connected with the administration of the Medi-Cal
37 program. However, in the context of a petition for the
38 appointment of a conservator for a person with respect to
39 whom such information is made or kept, and in the
40 context of a criminal prosecution for a violation of Section



1 368 of Penal Code with respect to such a person, all of the
2 following shall apply:

3 A public officer or employee of any such agency may
4 answer truthfully at any proceeding related to such
5 petition or prosecution, when asked if he or she is aware
6 of information that he or she believes is related to the
7 legal mental capacity of that aid recipient, or the need for
8 a conservatorship for that aid recipient. If the officer or
9 employee states that he or she is aware of this information
10 the court may order the officer or employee to testify
11 about his or her observations and to disclose any relevant
12 agency records if the court has an other independent
13 reason to believe that the officer or employee has
14 information that would facilitate the resolution of the
15 matter.

16 (b) Except as provided in this section and to the extent
17 permitted by federal law or regulation all information
18 about applicants and recipients as provided for in
19 subdivision (a) to be safeguarded includes, but is not
20 limited to, names and addresses, medical services
21 provided, social and economic conditions or
22 circumstances, agency evaluation of personal
23 information, and medical data, including diagnosis and
24 past history of disease or disability.

25 (c) Purposes directly connected with the
26 administration of the Medi-Cal Program, Chapter 8
27 (commencing with Section 14200), or Chapter 8.7
28 (commencing with Section 14520) encompass those
29 administrative activities and responsibilities the State
30 Department of Health Services and its agents are
31 required to engage in to insure effective program
32 operations. Such activities include but are not limited to:
33 establishing eligibility and methods of reimbursement;
34 determining the amount of medical assistance; providing
35 services for recipients; conducting or assisting an
36 investigation, prosecution, or civil or criminal proceeding
37 related to the administration of the Medi-Cal Program;
38 and conducting or assisting a legislative investigation or
39 audit related to the administration of the Medi-Cal
40 Program.



1 (d) Any officer, agent, or employee of the State
2 Department of Health Services or of any public agency
3 shall provide the Joint Legislative Audit Committee and
4 the Auditor General with any and all the information
5 described in subdivision (b) within a reasonable period
6 of time as determined by the committee in consultation
7 with the State Department of Health Services, after
8 receipt of a request from the committee approved by a
9 majority of the members of the committee. The Joint
10 Legislative Audit Committee and the Auditor General
11 may use such information only for the purpose of
12 investigating or auditing the administration of the
13 Medi-Cal Program, Chapter 8 (commencing with Section
14 14200), or Chapter 8.7 (commencing with Section 14520),
15 and shall not use such information for commercial or
16 political purposes. In any case where disclosure of
17 information is authorized by this section, the Joint
18 Legislative Audit Committee or the Auditor General shall
19 not disclose the identity of any applicant or recipient,
20 except in the case of a criminal or civil proceeding
21 conducted in connection with the administration of the
22 Medi-Cal Program.

23 (e) The access to information provided in subdivision
24 (d) shall be permitted only to the extent and under the
25 conditions provided by Federal Law and regulations
26 governing the release of such information.

27 (f) The State Department of Health Services may
28 make rules and regulations governing the custody, use
29 and preservation of all records, papers, files and
30 communications pertaining to the administration of the
31 laws relating to the Medi-Cal Program, Chapter 8
32 (commencing with Section 14200), or Chapter 8.7
33 (commencing with Section 14520). The rules and
34 regulations shall be binding on all departments, officials
35 and employees of the state, or of any political subdivision
36 of the state and may provide for giving information to or
37 exchanging information with agencies, public or political
38 subdivisions of the state, and may provide for giving
39 information to or exchanging information with agencies,
40 public or private, which are engaged in planning,



1 providing or securing such services for or in behalf of
 2 recipients or applicants; and for making case records
 3 available for research purposes, provided, that such
 4 research will not result in the disclosure of the identity of
 5 applicants for or recipients of such services.

6 (g) Upon request, the department shall release to the
 7 negotiator established pursuant to Article 2.6
 8 (commencing with Section 14081) all computer tapes and
 9 any modifications thereto, including paid claims,
 10 connected with the administration of the Medi-Cal
 11 program which are in the possession or under the control
 12 of the department, including tapes prepared prior to the
 13 effective date of this section.

14 To ensure compliance with federal law and regulations,
 15 the department shall make the minimum necessary
 16 modifications to its computer tapes prior to releasing the
 17 tapes to the negotiator in order to assure the
 18 confidentiality of the identity of all applicants for, or
 19 recipients of, those services. The department shall not
 20 make any modifications to paid claims tapes which affect
 21 information regarding beneficiaries' aid categories or
 22 counties of origin.

23 (h) Any person who knowingly releases or possesses
 24 confidential information concerning persons who have
 25 applied for or who have been granted any form of
 26 Medi-Cal benefits or benefits under Chapter 8
 27 (commencing with Section 14200) or Chapter 8.7
 28 (commencing with Section 14520) for which state or
 29 federal funds are made available in violation of this
 30 section is guilty of a misdemeanor.

31 SEC. 45. Section 15610.30 of the Welfare and
 32 Institutions Code is amended to read:

33 15610.30. (a) "Fiduciary abuse" means a situation in
 34 which one or both of the following apply:

35 (1) A person, including, but not limited to one who has
 36 the care or custody of, or who stands in a position of trust
 37 to, an elder or a dependent adult, takes, secretes, or
 38 appropriates their money or property, to any wrongful
 39 use, or for any purpose not in the due and lawful
 40 execution of his or her trust.



1 (2) A situation in which all of the following conditions
2 are satisfied:

3 (A) An elder (who would be a dependent adult if he
4 or she were between the ages of 18 and 64) or dependent
5 adult or his or her representative requests that a third
6 party transfer to the elder or dependent adult or to his or
7 her representative, or to a court appointed receiver,
8 property that meets all of the following criteria:

9 (i) The third party holds or has control of the property,
10 and

11 (ii) The property belongs to, or is held in express trust,
12 constructive trust or resulting trust for, the elder or
13 dependent adult, and

14 (iii) The ownership or control of the property was
15 acquired in whole or in part by the third party or someone
16 acting in concert with the third party from the elder or
17 dependent adult at a time when the elder or dependent
18 adult was a dependent adult or was a person who would
19 have been a dependent adult if he or she had then been
20 between the ages of 18 and 64.

21 (B) Despite the request for the transfer of property,
22 the third party without good cause either continues to
23 hold the property or fails to take reasonable steps to make
24 the property readily available to the elder or dependent
25 adult, to his or her representative or to a court appointed
26 receiver.

27 (C) The third party committed acts described in this
28 paragraph in bad faith, or despite the fact that the third
29 party either knew of, or had received from the elder or
30 dependent adult, or from the elder or dependent adult's
31 representative, sufficient information such that a
32 reasonable person would have considered obvious under
33 the circumstances that the elder or dependent adult's
34 right to have the property so transferred or so made
35 readily available.

36 (b) For the purpose of this section, the term "third
37 party" means a person who holds or has control of
38 property which belongs to or is held in express trust,
39 constructive trust or resulting trust for an elder or
40 dependent adult.



1 (c) For the purposes of this section, the term
2 “representative” means an elder or dependent adult’s
3 conservator, attorney, attorney in fact, the personal
4 representative of his or her estate, or the trustee of his or
5 her revocable or irrevocable trust.

6 (d) For the purposes of Article 8.5 (commencing with
7 Section 15657) the commission of fiduciary abuse as
8 defined in this paragraph shall constitute oppression.

9 SEC. 46. Section 15657 of the Welfare and Institutions
10 Code is amended to read:

11 15657. Where it is proven by clear and convincing
12 evidence that a defendant is liable for physical abuse as
13 defined in subdivision (c) of Section 15610, neglect as
14 defined in subdivision (d) of Section 15610, or fiduciary
15 abuse as defined in subdivision (f) of Section 15610, and
16 that the defendant has been guilty of recklessness,
17 oppression, fraud, or malice in the commission of this
18 abuse, in addition to all other remedies otherwise
19 provided by law:

20 (a) The court shall award to the plaintiff reasonable
21 attorney’s fees and costs. The term “costs” includes, but
22 is not limited to, reasonable fees for the services of a
23 conservator, if any, devoted to the litigation of a claim
24 brought under this article.

25 (b) The limitations imposed by Section 33734 of the
26 Code of Civil Procedure on the damages recoverable
27 shall not apply. However, the damages recovered shall
28 not exceed the damages permitted to be recovered
29 pursuant to subdivision (b) of Section 3333.2 of the Civil
30 Code.

31 (c) The standards set forth in subdivision (b) of
32 Section 3294 of the Civil Code regarding the imposition
33 of punitive damages on an employer based upon the acts
34 of an employee shall be satisfied before any damages or
35 attorney’s fees permitted under this section may be
36 imposed against an employer.

37 ~~SEC. 47. No reimbursement is required by this act~~
38 ~~pursuant to Section 6 of Article XIII B of the California~~
39 ~~Constitution for certain costs that may be incurred by a~~
40 ~~local agency or school district because in that regard this~~



1 ~~act creates a new crime or infraction, eliminates a crime~~
2 ~~or infraction, or changes the penalty for a crime or~~
3 ~~infraction, within the meaning of Section 17556 of the~~
4 ~~Government Code, or changes the definition of a crime~~
5 ~~within the meaning of Section 6 of Article XIII B of the~~
6 ~~California Constitution.~~

7 ~~However, notwithstanding Section 17610 of the~~
8 ~~Government Code, if the Commission on State Mandates~~
9 ~~determines that this act contains other costs mandated by~~
10 ~~the state, reimbursement to local agencies and school~~
11 ~~districts for those costs shall be made pursuant to Part 7~~
12 ~~(commencing with Section 17500) of Division 4 of Title~~
13 ~~2 of the Government Code. If the statewide cost of the~~
14 ~~claim for reimbursement does not exceed one million~~
15 ~~dollars (\$1,000,000), reimbursement shall be made from~~
16 ~~the State Mandates Claims Fund.~~

17 ~~Notwithstanding Section 17580 of the Government~~
18 ~~Code, unless otherwise specified, the provisions of this act~~
19 ~~shall become operative on the same date that the act~~
20 ~~takes effect pursuant to the California Constitution.~~

