

AMENDED IN SENATE JULY 6, 2000
AMENDED IN ASSEMBLY APRIL 24, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1950

Introduced by Assembly Member Rod Pacheco

February 15, 2000

An act to add Sections 765.5 and 6850.5, to the Financial Code, and to amend Sections 2351, 2359, 2401, 2403, and 2620, and 2852 of, and to add ~~Section~~ *Sections 2111.5 and 2401.6* to, the Probate Code, relating to conservatorship and guardianship.

LEGISLATIVE COUNSEL'S DIGEST

AB 1950, as amended, Rod Pacheco. Conservatorships and guardianships.

Existing law provides procedures by which banks and trust companies are required to handle deposits from an estate, as specified, that are subject to a court order. Existing law also provides that a savings association may accept fiduciary savings accounts from specified parties for a named beneficiary or beneficiaries.

This bill would require banks, trust companies, and savings associations to send specified documents to the court having jurisdiction of a guardianship or conservatorship when a guardian or conservator, pursuant to letters of guardianship or conservatorship, opens an account for the estate, or

changes the name of an existing account to reflect the guardianship or conservatorship.

Existing law requires that a guardian or conservator of a person be responsible for the care, custody, control, and education of a ward or conservatee, subject to a court's determination of the extent of those powers, as specified.

This bill would provide that a guardian or conservator of a person, in exercising his or her powers, may not hire or refer business to an entity in which he or she has a financial interest except with court authorization following a disclosure to the court in writing of his or her financial interest, *as defined*, in the entity. *This bill would also provide that when a guardian or conservator of a person petitions a court for approval of property transactions, he or she must disclose certain family relationships, as defined, with other parties to the transaction. A violation of these provisions would result in rescission of the transaction and potential liability for damages or a fine.*

Existing law provides that a guardian, conservator, or limited conservator of an estate is responsible for the management and control of the estate, and shall use ordinary care and diligence in exercising his or her powers.

This bill would provide that a guardian or conservator or limited conservator of an estate, in exercising his or her powers, may not hire or refer business to an entity in which he or she has a financial interest except with court authorization following a disclosure to the court in writing of his or her financial interest, *as defined*, in the entity. *This bill would also provide that when a guardian or conservator of an estate petitions a court for approval of property transactions, he or she must disclose certain family relationships, as defined, with other parties to the transaction. A violation of these provisions would result in rescission of the transaction and potential liability for damages or a fine.*

Existing law requires that a guardian or conservator use ordinary care and diligence in managing—~~a~~ and controlling an estate. Existing law further provides that a guardian or conservator who breaches a fiduciary duty is liable for, among other items, loss in the value of the estate, lost profits, and interest on these amounts.



This bill would provide that any surcharge that a guardian or conservator incurs as a result of the above-described liability may not be paid by or offset against future fees or wages to be provided by the estate to the guardian or conservator.

Existing law provides that a guardian or conservator shall make a periodic accounting, as specified, of the estate of the ward or conservatee after one year from the time of appointment, and not less than biennially, unless otherwise ordered by the court. Existing law further provides that a guardian or conservator shall make a final accounting following the death of the ward or conservatee, to include an account for the period ending on the date of death and a separate account for the period subsequent to the date of death.

This bill would require that, as part of the above-described accountings, a guardian or conservator submit ~~a copy~~ *copies* of ~~the most recent specified account statement~~ *statements* from ~~any financial institution~~ *institutions* where estate money is deposited.

~~Existing law requires all conservators and guardians, except as provided, to register with the Statewide Registry at the Department of Justice, and permits a court to appoint only a person registered with the Statewide Registry as a conservator or guardian. Existing law further requires a court to notify the Statewide Registry when it removes a conservator or guardian for cause, or accepts the resignation of a conservator or guardian, and the reasons for doing so provides that the superior court has jurisdiction over guardianship and conservatorship proceedings.~~

This bill would prohibit any court official or employee, or any person related by blood or marriage, as defined, who is involved in the ~~registration or~~ appointment of a conservator or guardian, or the processing of any document relating to a conservator or guardian, from purchasing, leasing, or renting the personal or real property from the estate of a conservatee or a ward whom the conservator or guardian represents. *A violation of these provisions would result in rescission of the property transaction and potential liability for damages or a fine.*



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 765.5 is added to the Financial
2 Code, to read:

3 765.5. When a guardian or conservator, pursuant to
4 letters of guardianship or conservatorship, opens an
5 account for the estate in a bank or trust company, or
6 changes the name of an existing account to reflect the
7 guardianship or conservatorship, the bank or trust
8 company shall send to the court having jurisdiction of the
9 guardianship or conservatorship a copy of the documents
10 that evidence the change.

11 SEC. 2. Section 6850.5 is added to the Financial Code,
12 to read:

13 6850.5. When a guardian or conservator, pursuant to
14 letters of guardianship or conservatorship, opens an
15 account for the estate in a savings association, or changes
16 the name of an existing account to reflect the
17 guardianship or conservatorship, the savings association
18 shall send to the court having jurisdiction of the
19 guardianship or conservatorship a copy of the documents
20 that evidence the change.

21 SEC. 3. *Section 2111.5 is added to the Probate Code,*
22 *to read:*

23 *2111.5. (a) Except as provided in subdivision (b),*
24 *every court official or employee who has duties or*
25 *responsibilities related to the appointment of a guardian*
26 *or conservator, or the processing of any document related*
27 *to a guardian or conservator, and every person who is*
28 *related by blood or marriage to a court official or*
29 *employee who has these duties, is prohibited from*
30 *purchasing, leasing, or renting any real or personal*
31 *property from the estate of the ward or conservatee*
32 *whom the guardian or conservator represents. For*
33 *purposes of this subdivision, a “person related by blood or*
34 *marriage” means any of the following:*

35 (1) *A person’s spouse.*



1 (2) *Relatives within the second degree of lineal or*
2 *collateral consanguinity of a person or a person's spouse.*

3 (b) *A person described in subdivision (a) is not*
4 *prohibited from purchasing real or personal property*
5 *from the estate of the ward or conservatee whom the*
6 *guardian or conservatee represents where the purchase*
7 *is made under terms and conditions of a public sale of the*
8 *property.*

9 (c) *A violation of this section shall result in the*
10 *rescission of the purchase, lease, or rental of the property.*
11 *Any losses incurred by the estate of the ward or*
12 *conservatee because the property was sold or leased at*
13 *less than fair market value shall be deemed as charges*
14 *against the guardian or conservator under the provisions*
15 *of Sections 2401.3 and 2401.5. In addition, punitive*
16 *damages equal to three times the charges shall be assessed*
17 *against the guardian, conservator, or other person in*
18 *violation of this section. If the estate does not incur losses*
19 *as a result of the violation, the court shall order the*
20 *guardian, conservator, or other person in violation of this*
21 *section to pay a fine of up to five thousand dollars (\$5,000)*
22 *for each violation.*

23 *SEC. 4. Section 2351 of the Probate Code is amended*
24 *to read:*

25 2351. (a) *Subject to subdivision (b), the guardian or*
26 *conservator, but not a limited conservator, has the care,*
27 *custody, and control of, and has charge of the education*
28 *of, the ward or conservatee.*

29 (b) *Where the court determines that it is appropriate*
30 *in the circumstances of the particular conservatee, the*
31 *court, in its discretion, may limit the powers and duties*
32 *that the conservator would otherwise have under*
33 *subdivision (a) by an order stating either of the following:*

34 (1) *The specific powers that the conservator does not*
35 *have with respect to the conservatee's person and*
36 *reserving the powers so specified to the conservatee.*

37 (2) *The specific powers and duties the conservator has*
38 *with respect to the conservatee's person and reserving to*
39 *the conservatee all other rights with respect to the*



1 conservatee's person that the conservator otherwise
2 would have under subdivision (a).

3 (c) An order under this section (1) may be included in
4 the order appointing a conservator of the person or (2)
5 may be made, modified, or revoked upon a petition
6 subsequently filed, notice of the hearing on the petition
7 having been given for the period and in the manner
8 provided in Chapter 3 (commencing with Section 1460)
9 of Part 1.

10 (d) The guardian or conservator, in exercising his or
11 her powers, may not hire or refer any business to an entity
12 in which he or she has a financial interest except upon
13 authorization of the court. Prior to authorization from the
14 court, the guardian or conservator shall disclose to the
15 court in writing his or her financial interest in the entity.
16 *For the purposes of this subdivision, "financial interest"*
17 *shall mean (1) an ownership interest in a sole*
18 *proprietorship, a partnership, or a closely held*
19 *corporation, or (2) an ownership interest of greater than*
20 *1 percent of the outstanding shares in a publicly traded*
21 *corporation, or (3) being an officer or a director of a*
22 *corporation. This subdivision shall apply only to*
23 *conservators and guardians required to register with the*
24 *Statewide Registry under Chapter 13 (commencing with*
25 *Section 2850).*

26 ~~SEC. 4.~~

27 *SEC. 5. Section 2359 of the Probate Code is amended*
28 *to read:*

29 2359. (a) Upon petition of the guardian or
30 conservator or ward or conservatee or other interested
31 person, the court may authorize and instruct the
32 guardian or conservator or approve and confirm the acts
33 of the guardian or conservator.

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

37 (c) *(1) When a guardian or conservator petitions for*
38 *the approval of a purchase, lease, or rental of real or*
39 *personal property from the estate of a ward or*
40 *conservator, the guardian or conservator shall provide a*



1 *statement disclosing the family or affiliate relationship*
2 *between the guardian and conservator and the*
3 *purchaser, lessee, or renter of the property, and the*
4 *family or affiliate relationship between the guardian or*
5 *conservator and any agent hired by the guardian or*
6 *conservator.*

7 (2) *For the purposes of this subdivision, “family”*
8 *means a person’s spouse or relatives within the second*
9 *degree of lineal or collateral consanguinity of a person or*
10 *a person’s spouse. For the purposes of this subdivision,*
11 *“affiliate” means an entity that is under the direct control,*
12 *indirect control, or common control of the guardian or*
13 *conservator.*

14 (3) *A violation of this section shall result in the*
15 *recession of the purchase, lease, or rental of the property.*
16 *Any losses incurred by the estate of the ward or*
17 *conservatee because the property was sold or leased at*
18 *less than fair market value shall be deemed as charges*
19 *against the guardian or conservator under the provisions*
20 *of Sections 2401.3 and 2401.5. In addition, punitive*
21 *damages equal to three times the charges shall be assessed*
22 *against the guardian, conservator, or other person in*
23 *violation of this section. If the estate does not incur losses*
24 *as a result of the violation, the court shall order the*
25 *guardian, conservator, or other person in violation of this*
26 *section to pay a fine of up to five thousand dollars (\$5,000)*
27 *for each violation.*

28 *SEC. 6. Section 2401 of the Probate Code is amended*
29 *to read:*

30 2401. (a) *The guardian or conservator, or limited*
31 *conservator to the extent specifically and expressly*
32 *provided in the appointing court’s order, has the*
33 *management and control of the estate and, in managing*
34 *and controlling the estate, shall use ordinary care and*
35 *diligence. What constitutes use of ordinary care and*
36 *diligence is determined by all the circumstances of the*
37 *particular estate.*

38 (b) *The guardian or conservator:*

39 (1) *Shall exercise a power to the extent that ordinary*
40 *care and diligence requires that the power be exercised.*



1 (2) Shall not exercise a power to the extent that
 2 ordinary care and diligence requires that the power not
 3 be exercised.

4 (c) The guardian or conservator, in exercising his or
 5 her powers, may not hire or refer any business to an entity
 6 in which he or she has a financial interest except upon
 7 authorization of the court. Prior to authorization from the
 8 court, the guardian or conservator shall disclose to the
 9 court in writing his or her financial interest in the entity.
 10 *For the purposes of this subdivision, "financial interest"*
 11 *shall mean (1) an ownership interest in a sole*
 12 *proprietorship, a partnership, or a closely held*
 13 *corporation, or (2) an ownership interest of greater than*
 14 *1 percent of the outstanding shares in a publicly held*
 15 *corporation, or (3) being an officer or a director of a*
 16 *corporation. This subdivision shall apply only to*
 17 *conservators and guardians required to register with the*
 18 *Statewide Registry under Chapter 13(commencing with*
 19 *Section 2850).*

20 ~~SEC. 5.~~

21 SEC. 7. Section 2401.6 is added to the Probate Code,
 22 to read:

23 2401.6. Any surcharge that a guardian or conservator
 24 incurs under the provisions of Sections 2401.3 or 2401.5
 25 may not be paid by or offset against future fees or wages
 26 to be provided by the estate to the guardian or
 27 conservator.

28 ~~SEC. 6.~~

29 SEC. 8. *Section 2403 of the Probate Code is amended*
 30 *to read:*

31 2403. (a) Upon petition of the guardian or
 32 conservator, the ward or conservatee, a creditor, or other
 33 interested person, the court may authorize and instruct
 34 the guardian or conservator, or approve and confirm the
 35 acts of the guardian or conservator, in the administration,
 36 management, investment, disposition, care, protection,
 37 operation, or preservation of the estate, or the incurring
 38 or payment of costs, fees, or expenses in connection
 39 therewith.



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

4 (c) (1) *When a guardian or conservator petitions for*
5 *the approval of a purchase, lease, or rental of real or*
6 *personal property from the estate of a ward or*
7 *conservator, the guardian or conservator shall provide a*
8 *statement disclosing the family or affiliate relationship*
9 *between the guardian and conservator and the*
10 *purchaser, lessee, or renter of the property, and the*
11 *family or affiliate relationship between the guardian or*
12 *conservator and any agent hired by the guardian or*
13 *conservator.*

14 (2) *For the purposes of this subdivision, "family"*
15 *means a person's spouse or relatives within the second*
16 *degree of lineal or collateral consanguinity of a person or*
17 *a person's spouse. For the purposes of this subdivision,*
18 *"affiliate" means an entity that is under the direct control,*
19 *indirect control, or common control of the guardian or*
20 *conservator.*

21 (3) *A violation of this section shall result in the*
22 *recession of the purchase, lease, or rental of the property.*
23 *Any losses incurred by the estate of the ward or*
24 *conservatee because the property was sold or leased at*
25 *less than fair market value shall be deemed as charges*
26 *against the guardian or conservator under the provisions*
27 *of Sections 2401.3 and 2401.5. In addition, punitive*
28 *damages equal to three times the charges shall be assessed*
29 *against the guardian, conservator, or other person in*
30 *violation of this section. If the estate does not incur losses*
31 *as a result of the violation, the court shall order the*
32 *guardian, conservator, or other person in violation of this*
33 *section to pay a fine of up to five thousand dollars (\$5,000)*
34 *for each violation.*

35 SEC. 9. Section 2620 of the Probate Code is amended
36 to read:

37 2620. (a) At the expiration of one year from the time
38 of appointment and thereafter not less frequently than
39 biennially, unless otherwise ordered by the court, the
40 guardian or conservator shall present the account of the



1 guardian or conservator to the court for settlement and
2 allowance in the manner provided in Chapter 4
3 (commencing with Section 1060) of Part 1 of Division 3.

4 (b) The final account of the guardian or conservator
5 following the death of the ward or conservatee shall
6 include an account for the period that ended on the date
7 of death and a separate account for the period subsequent
8 to the date of death.

9 (c) As part of the ~~accountings required by subdivisions~~
10 ~~(a) and (b), and the guardian or conservator shall submit~~
11 ~~to the court a copy of the most recent account statement~~
12 ~~from any financial institution where money belonging to~~
13 ~~the estate is deposited. *first accounting required by*~~
14 ~~*subdivision (a), the guardian or conservator shall submit*~~
15 ~~*to the court a copy of the account statement from any*~~
16 ~~*financial institution where money belonging to the estate*~~
17 ~~*is deposited that accounts for the period immediately*~~
18 ~~*preceding the date the guardian or conservator was*~~
19 ~~*appointed and the account statement from any financial*~~
20 ~~*institution where money belonging to the estate is*~~
21 ~~*deposited that accounts for the period immediately*~~
22 ~~*preceding the date the accounting is filed. As part of*~~
23 ~~*subsequent accountings and the accounting required by*~~
24 ~~*subdivision (b), the guardian or conservator shall submit*~~
25 ~~*to the court the most recent account statement from any*~~
26 ~~*financial institution where money belonging to the estate*~~
27 ~~*is deposited. The account statements from any financial*~~
28 ~~*institution submitted pursuant to this section shall be*~~
29 ~~*confidential and subject to discovery only upon an order*~~
30 ~~*of the court.*~~

31 ~~SEC. 7. Section 2852 of the Probate Code is amended~~
32 ~~to read:~~

33 ~~2852. (a) Any person who serves as a conservator or~~
34 ~~guardian without being registered with the Statewide~~
35 ~~Registry, who commits fraud in registering, who falsely~~
36 ~~asserts that he or she is registered, or who makes false~~
37 ~~claims or representations as to the nature of his or her file~~
38 ~~contained in the registry, shall be subject to a civil penalty~~
39 ~~in the amount of two hundred dollars (\$200) for the first~~
40 ~~violation and a civil penalty in the amount of five hundred~~



1 dollars (\$500) for each subsequent violation, to be
2 assessed and collected in a civil action brought by the
3 Department of Justice. All civil penalties collected shall
4 be deposited in the General Fund. A person who lawfully
5 delays registration pursuant to subdivision (b) of Section
6 2851 shall not be subject to a civil penalty for serving as
7 a conservator or guardian without being registered until
8 the time that subdivision (b) of Section 2851 authorizes
9 his or her removal for failure to register.

10 (b) Any court that removes a conservator or guardian
11 for cause and any court that has accepted the resignation
12 of a conservator or guardian shall notify the Statewide
13 Registry of that removal and the reason therefor. The
14 courts shall consider that information prior to the
15 appointment of a conservator or guardian pursuant to a
16 subsequent petition for appointment as conservator or
17 guardian.

18 (e) Every person, including any court official or
19 employee, or a person who is related by blood or marriage
20 to a court official or employee, who has duties or
21 responsibilities related to the registration or appointment
22 of a conservator or guardian, or the processing of any
23 document related to a conservator or guardian, is
24 prohibited from purchasing, offering to purchase, leasing,
25 or renting any real or personal property from the estate
26 of the conservatee or the ward whom the conservator or
27 guardian represents. For purposes of this subdivision “a
28 person who is related by blood or marriage” means any
29 of the following:

30 (1) A person’s spouse.

31 (2) Relatives within the third degree of lineal or
32 collateral consanguinity of a person or the person’s
33 spouse.

34 (3) The spouse of any person described in paragraph
35 (2).

