

AMENDED IN SENATE AUGUST 10, 2000

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 of, and to add 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 ~~recession~~ *rescission* of the transaction and potential liability for damages *and a civil penalty* 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 ~~recession~~ *rescission* of the transaction and potential liability for damages *and a civil penalty* or a fine.

Existing law requires that a guardian or conservator use ordinary care and diligence in managing 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 copies of specified account statements from financial institutions where estate money is deposited.

Existing law 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 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 ~~reversion~~ *rescission* of the property transaction and potential liability for damages *and a civil penalty* 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.
- 36 (2) Relatives within the second degree of lineal or
- 37 collateral consanguinity of a person or a person’s spouse.



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

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

25 SEC. 4. Section 2351 of the Probate Code is amended
26 to read:

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

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

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

39 (2) The specific powers and duties the conservator has
40 with respect to the conservatee's person and reserving to



1 the conservatee all other rights with respect to the
2 conservatee’s person that the conservator otherwise
3 would have under subdivision (a).

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

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

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~~ conservatee, the guardian ~~of~~ or conservator



1 shall provide a statement disclosing the family or affiliate
2 relationship between the guardian and conservator and
3 the 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~~ *rescission* of the purchase, lease, or rental of the
16 property. 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~~
22 ~~assessed~~ *The court shall assess a civil penalty equal to*
23 *three times the charges* against the guardian,
24 conservator, or other person in violation of this section,
25 *and may assess punitive damages as it deems proper.* If
26 the estate does not incur losses as a result of the violation,
27 the court shall order the guardian, conservator, or other
28 person in violation of this section to pay a fine of up to five
29 thousand dollars (\$5,000) for each violation. *The fines and*
30 *penalties provided in this section are in addition to any*
31 *other rights and remedies provided by law.*

32 SEC. 6. Section 2401 of the Probate Code is amended
33 to read:

34 2401. (a) The guardian or conservator, or limited
35 conservator to the extent specifically and expressly
36 provided in the appointing court’s order, has the
37 management and control of the estate and, in managing
38 and controlling the estate, shall use ordinary care and
39 diligence. What constitutes use of ordinary care and



1 diligence is determined by all the circumstances of the
2 particular estate.

3 (b) The guardian or conservator:

4 (1) Shall exercise a power to the extent that ordinary
5 care and diligence requires that the power be exercised.

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

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

25 SEC. 7. Section 2401.6 is added to the Probate Code,
26 to read:

27 2401.6. Any surcharge that a guardian or conservator
28 incurs under the provisions of Sections 2401.3 or 2401.5
29 may not be paid by or offset against future fees or wages
30 to be provided by the estate to the guardian or
31 conservator.

32 SEC. 8. Section 2403 of the Probate Code is amended
33 to read:

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



1 or payment of costs, fees, or expenses in connection
2 therewith.

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

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

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

23 (3) A violation of this section shall result in the
24 ~~recession~~ *rescission* of the purchase, lease, or rental of the
25 property. Any losses incurred by the estate of the ward or
26 conservatee because the property was sold or leased at
27 less than fair market value shall be deemed as charges
28 against the guardian or conservator under the provisions
29 of Sections 2401.3 and 2401.5. ~~In addition, punitive~~
30 ~~damages equal to three times the charges shall be assessed~~
31 *The court shall assess a civil penalty equal to three times*
32 *the charges* against the guardian, conservator, or other
33 person in violation of this section, *and may assess punitive*
34 *damages as it deems proper*. If the estate does not incur
35 losses as a result of the violation, the court shall order the
36 guardian, conservator, or other person in violation of this
37 section to pay a fine of up to five thousand dollars (\$5,000)
38 for each violation. *The fines and penalties provided in this*
39 *section are in addition to any other rights and remedies*
40 *provided by law.*



1 SEC. 9. Section 2620 of the Probate Code is amended
2 to read:

3 2620. (a) At the expiration of one year from the time
4 of appointment and thereafter not less frequently than
5 biennially, unless otherwise ordered by the court, the
6 guardian or conservator shall present the account of the
7 guardian or conservator to the court for settlement and
8 allowance in the manner provided in Chapter 4
9 (commencing with Section 1060) of Part 1 of Division 3.

10 (b) The final account of the guardian or conservator
11 following the death of the ward or conservatee shall
12 include an account for the period that ended on the date
13 of death and a separate account for the period subsequent
14 to the date of death.

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

