

ASSEMBLY AGING AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4615

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 8, 2021

The Assembly Aging and Senior Services Committee reports favorably and with committee amendments Assembly Bill No. 4615.

This bill revises the law pertaining to conservatorship arrangements in order to encourage ethical conduct by conservators and provide stronger protections for conservatees and proposed conservatees. Specifically, the bill makes the following substantive changes to strengthen the existing conservatorship law:

Existing law requires a court to appoint counsel for a proposed conservatee only if it believes that counsel is necessary to adequately protect the conservatee's interests. The bill would amend the law to require a conservatee or proposed conservatee to be represented by counsel throughout the course of conservatorship proceedings and, if a conservatorship is established, until such time as the conservatorship is terminated. The bill would further require counsel to personally interview the conservatee or proposed conservatee not more than 72 hours before each scheduled hearing related to conservatorship and certify to the court that the interview has been performed. If the conservatee or proposed conservatee is, at any time, not represented by counsel and is unable to afford counsel, the court will be required to appoint counsel for the person.

Existing law requires a conservatee or proposed conservatee to be present at each hearing relating to the conservatorship unless the person is unable to attend by reason of physical or other inability established to the court's satisfaction. If it is alleged that the conservatee or proposed conservatee is unable to attend, the existing law requires the court to order an investigation unless the court believes, in its discretion, that the interests of the conservatee are adequately protected by counsel. The bill would amend the existing law to require a court to order an investigation in any case where it is alleged that the conservatee or proposed conservatee is unable to attend the hearing in order to verify that the conservatee or proposed conservatee is, in fact, incapable of attending the hearing. The investigation is to be ordered regardless of whether the court believes that the interests of the conservatee or the proposed conservatee are adequately represented and protected by counsel.

Existing law authorizes a civil action for conservatorship to be filed either by the proposed conservatee or by one of the following individuals: 1) the spouse of the conservatee; 2) the adult children of the conservatee or, if there are no adult children, the person or persons who are closest in degree of kinship to the conservatee; 3) a public agency or social services official of the State or county in which the conservatee resides; 4) the chief administrator of a State licensed hospital, school, or institution in which the conservatee is a patient or from which the conservatee receives services; or 5) any other person having concern for the financial or personal well-being of the conservatee. The bill would amend the law to remove the catch-all provision that allows a civil action to be filed by any person who has concern for the financial or personal well-being of the conservatee.

The bill provides that every person who is entitled by law to receive notice of a conservatorship proceeding, including: 1) the proposed conservatee; 2) the spouse and adult children of the conservatee or, if there are no adult children, the person or persons closest in degree of kinship to the conservatee; and 3) the person with whom the conservatee resides or, if the conservatee resides in an institution, the chief administrator of that institution, are entitled to appear at all hearings and be heard on all matters relating to the conservatorship. Existing law authorizes such persons to appear at hearings and be heard on matters related to the conservatorship only if the court approves of such action and deems it to be in the interest of the conservatee. Although the bill would entitle these persons to appear and present testimony and other evidence, it would preserve the court's ability to use its discretion in determining the relevance and credibility of, and the weight to be given to, the testimony and evidence.

Existing law provides for a conservator to file with the clerk of court, under oath, an inventory identifying and appraising all of the real and personal property that has come into the conservator's hands or control or has come into the hands of any other person, on the conservator's behalf; however, such inventory need only be submitted if the court expressly requires such reporting. The court is not currently required, by existing law, to review any inventory that is filed therewith. The bill would amend the existing law to require a conservator, in all cases, to file with the clerk of court, under oath, at time intervals ordered by the court, but not less often than every six months during the course of a conservatorship, the inventory required by existing law, as well as a formal accounting that shows each expenditure and disbursement that has been made by the conservator from the conservatee's estate during the reporting period. The bill would further require the court to review the inventories and accounting statements submitted pursuant to the bill, on at least an annual basis, in order to ensure that the conservator is properly fulfilling the conservator's duties with respect to the conservatee and is

operating in a manner consistent with the conservatee's best interests. The bill authorizes the court, at any time, and requires the court, whenever an inventory or formal accounting indicates that the conservator may not be properly fulfilling the conservator's duties or acting in the conservatee's best interests, to appoint a third-party to interview the conservatee and conservator and to undertake any other investigation the court may direct.

The bill would clarify that a conservator will also be required to annually provide, to the conservatee and the court, an informal report or accounting statement setting forth the income and other assets within the conservator's control that have been collected and expended or otherwise distributed by the conservator during the preceding year. This informal report or accounting statement will be supplemental to the formal inventory and accounting statements that are to be submitted to the court, under oath, at least every six months under the bill.

The bill would require a conservator, when expending or distributing funds from the conservatee's estate, to take into account the requirements of the "Prudent Investor Act," P.L.1997, c.36 (C.3B:20-11.1 et seq.). The bill also specifies that the conservator will be required to give due regard to, and to take actions that are consistent with, the ward's best interests and the ward's expressed wishes and preferences, to the extent that the ward is capable of expressing those wishes and preferences.

Although existing law already provides that a conservator will be liable to the conservatee or other interested parties, to the same extent as a trustee of an express trust, whenever the exercise of a conservator's power is improper, the bill would clarify this provision by providing a list of examples of instances where a conservator's exercise of power is improper. Specifically, the bill provides that a conservator will be liable to the same extent as a trustee of an express trust whenever a court finds that the conservator has breached his or her fiduciary duties by taking an action that is outside the scope of the conservatorship arrangement or that violates the rights of the conservatee, contradicts or violates the conservatee's best interests, or is otherwise deemed by the court to be improper for a fiduciary.

Finally, the bill amends the existing conservatorship law to modernize and clarify the existing language and paragraph and sentence structure and ensure that appropriate language is used consistently, and is presented in an active and direct voice, throughout the law.

COMMITTEE AMENDMENTS:

The committee amended the bill to take effect on the 180th day after the date of enactment. As introduced, the bill would have taken effect immediately.