

CHAPTER 1356

An act to add Section 26840.3 to the Government Code, relating to marriage.

[Approved by Governor September 29, 1976 Filed with
Secretary of State September 30, 1976.]

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

SECTION 1. Section 26840.3 is added to the Government Code, to read:

26840.3. The superior court of any county which maintains a conciliation court may, upon action by the board of supervisors to provide from other sources a substantially equal amount, increase the following fees by the following amounts:

(a) The fee for the filing of a petition for dissolution of a marriage, a petition for legal separation, or a petition for nullity of a marriage, by not to exceed five dollars (\$5).

(b) The fee for issuing a marriage license, by not to exceed two dollars (\$2).

(c) The fee for filing a marriage certificate pursuant to Section 4213 of the Civil Code, by not to exceed two dollars (\$2).

The funds shall be paid to the county treasury and shall be used exclusively to pay the costs of maintaining the conciliation court.

CHAPTER 1357

An act to amend Section 27706 of the Government Code, and to amend Sections 1404, 1405, 1435.2, 1460, 1461, 1461.3, 1461.5, 1462, 1470, 1471, 1472, 1500, 1510, 1553, 1554, 1570, 1580, 1631, 1645, 1751, 1754, 1801, 1851, 1853, 1951, and 2206 of, and to add Sections 1461.1, 1500.1, 1500.2, 1606, 1754.1, 1851.1, 1851.2, and 2006 to, the Probate Code, relating to civil law.

[Approved by Governor September 29, 1976 Filed with
Secretary of State September 30, 1976.]

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

SECTION 1. Section 27706 of the Government Code is amended to read:

27706. The public defender shall perform the following duties:

(a) Upon request of the defendant or upon order of the court, he shall defend, without expense to the defendant, except as provided by Section 987.8 of the Penal Code, any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the superior, municipal or justice courts at all stages of the proceedings, including the preliminary

examination. The public defender shall, upon request, give counsel and advice to such person about any charge against him upon which the public defender is conducting the defense, and shall prosecute all appeals to a higher court or courts of any person who has been convicted, where, in his opinion, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction.

(b) Upon request, he shall prosecute actions for the collection of wages and other demands of any person who is not financially able to employ counsel, where the sum involved does not exceed one hundred dollars (\$100), and where, in the judgment of the public defender, the claim urged is valid and enforceable in the courts.

(c) Upon request, he shall defend any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the public defender, the person is being persecuted or unjustly harassed.

(d) Upon request, or upon order of the court, he shall represent any person who is not financially able to employ counsel in proceedings under Divisions 4 (commencing with Section 1400) and 5 (commencing with Section 1701) of the Probate Code and Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(e) Upon order of the court, he shall represent any person who is entitled to be represented by counsel but is not financially able to employ counsel in proceedings under Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code.

(f) Upon order of the court he shall represent any person who is required to have counsel pursuant to Section 686.1 of the Penal Code.

(g) Upon the order of the court or upon the request of the person involved, he may represent any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile proceedings.

SEC. 2. Section 1404 of the Probate Code is amended to read:

1404. Either parent of an unmarried incompetent person may appoint a guardian of the person and estate, or person or estate, of such person, by will or by deed, to take effect upon the death of the parent appointing, with the written consent of the other parent, or if the other parent is dead or incapable of consent. If the incompetent person is married, such appointment may be made by the spouse.

SEC. 3. Section 1405 of the Probate Code is amended to read:

1405. The superior court shall appoint a general guardian of the person and estate, or person or estate, of minors and incompetent persons, whenever necessary or convenient, and when no guardian has been appointed for the purpose by will or by deed. The court, in its discretion, may appoint more than one guardian and shall

require either a separate bond from each or a joint and several bond. Where two or more guardians are appointed as coguardians, each shall be governed and liable in all respects as a sole guardian. If the estate does not exceed ten thousand dollars (\$10,000), the court may require that the money in the estate be deposited in a bank or trust company or be invested in an account in an insured savings and loan association subject to withdrawal only upon the order of the court in which case no bond be required of the guardian. The court shall also confirm an appointment made by will or by deed, whenever requested, upon the same procedure and notice as in the case of appointment by the court.

SEC. 4. Section 1435.2 of the Probate Code is amended to read:

1435.2. As used in this chapter the word incompetent shall mean a legal, not a medical disability and shall be measured by functional incapacities. It shall be construed to mean or refer to any adult person who, in the case of a guardianship of the person, is unable properly to provide for his own personal needs for physical health, food, clothing or shelter, and, in the case of a guardianship of the estate, is substantially unable to manage his own financial resources. "Substantial incapacity" shall not be evidenced solely by isolated instances of negligence or improvidence.

SEC. 5. Section 1460 of the Probate Code is amended to read:

1460. Any superior court to which application is made as hereinafter provided may appoint a guardian for the person and estate or person or estate of an incompetent person, who is a resident of this state. As used in this division and Division 5 of this code, the phrase "incompetent person," "incompetent," or "conservatee" shall mean a legal, not a medical disability and shall be measured by functional incapacities. It shall be construed to mean or refer to any adult person who, in the case of a guardianship of the person, is unable properly to provide for his own personal needs for physical health, food, clothing or shelter, and, in the case of a guardianship of the estate, is substantially unable to manage his own financial resources. "Substantial incapacity" shall not be evidenced solely by isolated incidents of negligence or improvidence.

SEC. 6. Section 1461 of the Probate Code is amended to read:

1461. Any relative or friend may file a verified petition alleging that a person is incompetent, and setting forth the names and residences, so far as they are known to the petitioner, of the relatives of the alleged incompetent person within the second degree residing within or without the state. The clerk shall set the petition for hearing by the court and issue a citation directed to the alleged incompetent person setting forth the time and place of hearing so fixed by him.

The citation shall include a specific delineation of the legal standards by which the need for a guardianship is adjudged as stated in Section 1460, and shall state that the alleged incompetent person may be adjudged incompetent and by reason thereof a guardian may be appointed for his person and estate or person or estate, that such

adjudication may transfer his right to contract, manage and control his property, and to fix his residence to the appointed guardian, that the court or a court investigator will explain the nature, purpose and effect of the proceeding to the alleged incompetent person and answer questions concerning such explanation, that the alleged incompetent person shall have the right to appear at such hearing and oppose such petition, that he shall have the right to legal counsel of his own choosing, including the right to have legal counsel appointed for him by the court if he is unable to retain one, and that he has the right to a jury trial if he so desires.

The citation, and a copy of the petition, shall be served upon the alleged incompetent person in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court, at least 10 days before the time of the hearing.

Notice of the nature of the proceedings and of the time and place of the hearing shall be mailed by the petitioner to each of the relatives of the alleged incompetent person named in the petition at least 15 days before the time of hearing unless the time is shortened by the court for good cause shown. The court may order that similar notice be given to other persons in such manner as the court may direct. Any relative or friend of the alleged incompetent person or the alleged incompetent person himself may appear and oppose the petition.

If the alleged incompetent person is within the state and is able to attend, he shall be produced at the hearing, and if he is not able to attend by reason of medical inability, such inability shall be evidenced by the affidavit or certificate of a duly licensed medical practitioner, unless such alleged incompetent person is a patient at a county or state hospital in this state in which case the affidavit or certificate shall be by the medical director or medical superintendent or acting medical director or medical superintendent of such county or state hospital. If the proposed ward is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of such religion, an affidavit as to his or her medical inability to attend by the accredited practitioner shall be acceptable.

If the alleged incompetent person is not within the state and if the court determines that his attendance at the hearing is necessary in the interest of justice, the court may order him to be produced at the hearing upon penalty of dismissing the petition if he is not produced. If such an order is made and it is contended that the alleged incompetent person is not able to attend by reason of medical inability such inability shall be evidenced by the affidavit or certificate of a duly licensed medical practitioner.

Emotional or psychological instability shall not be considered good cause for the absence of the alleged incompetent person within the meaning of this section, unless, by reason of such instability,

attendance at the hearing is likely to cause serious and immediate physiological damage to the alleged incompetent person. The medical affidavit shall be evidence only of the alleged incompetent person's medical inability to attend the hearing and shall not be considered in determining the issue of incompetency.

SEC. 7. Section 1461.1 is added to the Probate Code, to read:

1461.1. Upon receipt of the affidavit or certificate attesting to the proposed ward's inability to attend the hearing, the court shall appoint a court investigator to personally interview the proposed ward and to inform him as to the contents of the citation, the nature, purpose and effect of the proceeding, and of his right to oppose the proceeding, attend the hearing, have the matter tried by jury and be represented by counsel. The investigator shall also determine whether it appears that the proposed ward is unable to attend the hearing, whether the proposed ward wishes to contest the establishment of the guardianship, whether the proposed ward wishes to be represented by counsel, and if so, whether the proposed ward has retained counsel, and if not, the name of an attorney the proposed ward wishes to retain.

If the proposed ward does not wish to contest the establishment of the guardianship, the investigator shall determine if the proposed ward objects to the proposed guardian, or if he prefers another person to act as guardian.

The court investigator shall report his findings, including the proposed ward's express statement concerning representation by counsel, in writing, to the court at least five days before the date set for hearing.

As used in this chapter, a "court investigator" or "investigator" is a person trained in law who is an officer or special appointee of the court with no personal or other beneficial interest in the proceedings.

SEC. 8. Section 1461.3 of the Probate Code is amended to read:

1461.3. If the alleged incompetent person is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Health and such fact is known to the petitioner, the petitioner shall name the institution in the petition, and shall give notice of the filing of the petition for appointment of a guardian and of the time and place of the hearing by mailing such notice and a copy of the petition to the Director of the State Department of Health at his office in Sacramento at least 15 days before the hearing unless the time is shortened by the court for good cause shown.

SEC. 9. Section 1461.5 of the Probate Code is amended to read:

1461.5. Prior to the appointment of a guardian for the person and estate or person or estate of an incompetent person, the court shall inform the alleged incompetent person as to the nature and purpose of the guardianship proceeding, that the appointment of a guardian for his person and estate or person or estate is a legal adjudication of his incompetence, the effect of such an adjudication on his basic rights the identity of the person who has been nominated as his

guardian, that he has a right to oppose such proceeding, to have the matter tried by jury, and to be represented by legal counsel if he chooses. After communicating such information to the person and prior to the appointment of his guardian, the court shall consult the person to determine his opinion concerning the appointment. Any adult developmentally disabled person for whom guardianship or conservatorship is sought pursuant to this article shall be informed of his right to counsel by the court; and if he does not have an attorney for the proceedings the court shall immediately appoint the public defender or other attorney to represent him. The person shall pay the cost for such legal service if he is able.

If the alleged incompetent person is unable to attend the hearing and such inability has been medically certified pursuant to Section 1461, the provisions of this section shall not apply.

SEC. 10. Section 1462 of the Probate Code is amended to read:

1462. If, upon the hearing, it appears to the court that the person in question is insane or incompetent, the court must appoint a guardian of his person and estate, or person or estate. In awarding letters of guardianship, the court shall give preference to such person as may have been designated by will or deed, unless good cause to the contrary is shown.

Before letters of guardianship may issue, a copy of the order appointing the guardian shall be served by mail upon the ward. The order shall contain the names, addresses, and telephone numbers of the guardian, the ward's attorney, if any, and the court investigator, if any.

The selection of a guardian of the person and estate or person or estate shall be solely in the discretion of the court. Among persons equally qualified in the opinion of the court to be appointed as guardian, preference is to be given as follows:

- (1) To the ward's nominee under Section 1463.
- (2) To the spouse of a married ward or the nominee of such spouse, unless an action for dissolution of marriage is pending;
- (3) To an adult child of the ward or the nominee of such child;
- (4) To a parent of the ward or the nominee of such parent;
- (5) To a brother or sister of the ward or the nominee of such brother or sister;
- (6) To any qualified person or corporation upon the appropriate petition to the court, or if there is no such person or corporation qualified and willing to act in such capacity, to the public guardian under Section 8006 of the Welfare and Institutions Code.

The preference for any nominee to appointment under subdivisions (3), (4), and (5) shall be subordinate to the preference for any other child, parent, brother or sister in such class.

SEC. 11. Section 1470 of the Probate Code is amended to read:

1470. Any person who has been declared incompetent and for whom a guardian has been appointed as an incompetent person, or the guardian, or any relative or friend, may apply, by petition, to the superior court of the county in which such person was declared

incompetent, or from which letters of guardianship were issued, to have the fact of his restoration to capacity judicially determined. The petition must be verified, and must state that such person is then competent.

SEC. 12. Section 1471 of the Probate Code is amended to read:

1471. The clerk shall set the petition for hearing by the court. At the request of the person so declared incompetent the question of his restoration to capacity must be tried by a jury, which must be summoned and impaneled in the same manner as juries in civil actions. At least five days' notice of the trial or hearing must be given to the person so declared incompetent and to the guardian of such person, and to the person's spouse, if any, and to his or her father and mother, if in the state.

SEC. 13. Section 1472 of the Probate Code is amended to read:

1472. On the trial or hearing, the person so declared incompetent and the guardian of such person, or any relative of such person, and, in the discretion of the court, any other person, may contest the right to the relief demanded. Witnesses may be required to appear and testify, as in civil cases, and may be called and examined by the court on its own motion. If it is found that the person in question is competent and capable of managing and taking care of himself and his property, his restoration to capacity must be adjudged and the guardianship of such person, if not a minor, must cease.

SEC. 14. Section 1500 of the Probate Code is amended to read:

1500. Every guardian has the care and custody of the person of his ward and the management of his estate, or the care and custody of the person of his ward or the management of his estate, according to the order of appointment, until legally discharged, or until his ward is restored to capacity pursuant to Chapter 5 (commencing with Section 1470) of this division, whichever shall occur first, or, in case of the guardianship of the person of a minor, until the minor reaches the age of majority or marries, or, as to the guardianship of his estate, until the ward attains his majority as provided in Section 25 of the Civil Code. The guardian of a minor also has charge of the education of the minor. The guardian of the person of a ward may fix the residence of the ward at any place in the state, but not elsewhere without the permission of the court.

No person for whom a guardian of the person has been appointed shall be placed in a mental health treatment facility against his will. Involuntary civil mental health treatment for a ward shall be obtained only pursuant to the provisions of Article 1 (commencing with Section 5150), Article 1.5 (commencing with Section 5170), Article 2 (commencing with Section 5200), Article 3 (commencing with Section 5225), Article 4 (commencing with Section 5250), Article 4.5 (commencing with Section 5260), Article 5 (commencing with Section 5275), Article 6 (commencing with Section 5300), Article 7 (commencing with Section 5325), Article 8 (commencing with Section 5340), and Chapter 3 (commencing with Article 5350) of Division 5 of the Welfare and Institutions Code.

(a) A person who is not a ward shall not be presumed to be incompetent by virtue of his having been a ward under the provisions of this division.

(b) All petitions filed under this chapter shall be set for hearing within 30 days of the filing of such petitions.

(c) The guardian shall promptly advise the court issuing the letters of guardianship in writing of all changes in the residence of the ward.

SEC. 15. Section 1500.1 is added to the Probate Code, to read:

1500.1. Each guardianship initiated pursuant to this chapter shall be reviewed by the court one year after the appointment of the guardian and biennially thereafter. The court investigator shall visit the ward and personally inform the ward that he is under a guardianship and the name of his guardian. The investigator shall also determine whether the ward wishes to petition the court for restoration to capacity, whether the ward is still incompetent, and whether the present guardian is acting in the best interests of the ward.

The findings of the court investigator, including the facts upon which such findings are based, shall be certified in writing to the court within 15 days of the date of review.

If the ward wishes to petition the court for restoration to capacity or for removal of the existing guardian, the court shall notify the attorney of record for the ward, if any, or appoint the public defender or other attorney to file the petition and represent the ward at the hearing or trial.

If, based upon information contained in the court investigator's report, the court determines that a hearing for restoration to capacity or removal of the existing guardian is in the best interests of the ward, the court shall notify the attorney of record for the ward, if any, or appoint the public defender or other attorney to file the petition and represent the ward at the hearing or trial.

If the court investigator is unable to locate the ward, the court shall serve notice upon the guardian to produce the ward within 15 days of the receipt of such notice or show cause why the guardianship should not be terminated. If the ward is not produced within the time prescribed and if no good cause is shown for not producing the ward, the court shall terminate the guardianship and order the guardian to file an accounting, if the guardianship is of the estate.

SEC. 16. Section 1500.2 is added to the Probate Code, to read:

1500.2. For all guardianships established prior to the effective date of the amendments to this division adopted at the 1975-76 Regular Session of the Legislature, review pursuant to the terms of Section 1500.1 shall commence at the time of the next financial accounting, but in all cases within three years from the effective date of such amendments.

SEC. 17. Section 1510 of the Probate Code is amended to read:

1510. If the court approves a compromise of, or the execution of a covenant not to sue on, a minor's disputed claim for damages,

money or other property, or approves a compromise of a pending action or proceeding to which a minor or incompetent person is a party, or gives judgment for such a person, and the money or the value of other property to be paid or delivered under such compromise, covenant, order or judgment does not exceed ten thousand dollars (\$10,000), and there is no guardian of the estate of the minor or incompetent person, such court, in its discretion, may require that the remaining balance of any money paid or to be paid under such compromise, covenant, order or judgment, after payment of all expenses, costs and fees as approved and allowed by the court, be deposited in a bank or banks, or a trust company or companies, or be invested in an account or accounts in an insured savings and loan association or associations, or be invested in shares of an insured credit union, subject to withdrawal only upon the order of the court, or it may require a guardian of the estate to be appointed and the money or the other property to be paid or delivered to such guardian, or prescribe such other conditions as the court in its discretion deems to the best interests of the minor or incompetent person; provided, however, that if the money or the value of other property to be paid or delivered under such compromise, covenant, order or judgment does not exceed one thousand dollars (\$1,000), and such money or property is to be paid or delivered for the benefit of a minor, the court may direct that all or any part of the money or the property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Section 1430 of the Probate Code. If the money or the value of other property to be paid or delivered under such compromise, covenant, order or judgment exceeds ten thousand dollars (\$10,000), and there is no guardian of the estate of the minor or incompetent person, such court shall require a guardian of the estate to be appointed and shall direct that the money or the other property be paid or delivered to the guardian, or in lieu of the appointment of a guardian of the estate, shall require that the remaining balance of any money paid or to be paid under such compromise, covenant, order or judgment, after payment of all expenses, costs and fees as approved and allowed by the court, be deposited in a bank or banks, or a trust company or companies, or be invested in an account or accounts in an insured savings and loan association or associations, or be invested in shares of an insured credit union, subject to withdrawal only upon order of the court, and as to other property to be paid or delivered, the court shall prescribe such conditions as it may deem to the best interests of the minor or incompetent person.

Notwithstanding any other provision of law, upon approval of a compromise of, or the execution of a covenant not to sue on, a minor's disputed claim, or approval of a compromise of a pending action or proceeding to which a minor is a party, or giving judgment for such a person, providing for the payment or delivery of money or other property, in any case to which this section applies, the court

making the order or giving judgment, and as a part thereof, may expressly retain jurisdiction of any part or all of the money paid, delivered, deposited, or invested until the minor reaches the age of 18 years.

Upon approval of a compromise of, or the execution of a covenant not to sue on, a minor's disputed claim, or approval of a compromise of a pending action or proceeding to which a minor or incompetent person is a party, or giving judgment for such a person, providing for the payment or delivery of money or other property, the court making the order or giving judgment, and as a part thereof, shall make a further order authorizing and directing a parent of the minor or guardian of the minor or incompetent person, or the payer of any money to be paid for the benefit of such person, to pay, from the money or other property to be paid or delivered, such reasonable expenses (medical or otherwise and including reimbursement to a parent or guardian), costs and attorney's fees as the court shall approve and allow therein. The remaining balance of such money or other property shall be paid, delivered or deposited as hereinabove provided.

The term "account in an insured savings and loan association" used in this section means shares issued by a federal savings and loan association, or investment certificates issued by a state-chartered building and loan association or savings and loan association doing business in this state which is an "insured institution" as defined in Title IV of the National Housing Act, or shares issued by a state-chartered building and loan association or savings and loan associations doing business in this state which does not issue investment certificates and which is an "insured institution" as defined in Title IV of the National Housing Act.

The term "shares of an insured credit union" means shares issued by a credit union, either federally chartered or state licensed, which are insured under Title II of the Federal Credit Union Act.

Where reference is made in this section to "guardian of the estate" such reference shall be deemed to include "conservator of the estate," and reference to "incompetent person" shall be deemed to include "a person for whom a conservator may be appointed."

SEC. 17.5. Section 1510 of the Probate Code is amended to read:

1510. If the court approves a compromise of, or the execution of a covenant not to sue on, a minor's disputed claim for damages, money or other property, or approves a compromise of a pending action or proceeding to which a minor or incompetent person is a party, or gives judgment for such a person, and the money or the value of other property to be paid or delivered under such compromise, covenant, order or judgment does not exceed ten thousand dollars (\$10,000), and there is no guardian of the estate of the minor or incompetent person, such court, in its discretion, may require that the remaining balance of any money paid or to be paid under such compromise, covenant, order or judgment, after payment of all expenses, costs and fees as approved and allowed by

the court, be deposited in a bank or banks, or a trust company or companies, or be invested in an account or accounts in an insured savings and loan association or associations, or be invested in shares of an insured credit union, or in a single-premium deferred annuity issued by an admitted life insurer, subject to withdrawal only upon the order of the court, or it may require a guardian of the estate to be appointed and the money or the other property to be paid or delivered to such guardian, or prescribe such other conditions as the court in its discretion deems to the best interests of the minor or incompetent person; provided, however, that if the money or the value of other property to be paid or delivered under such compromise, covenant, order or judgment does not exceed one thousand dollars (\$1,000), and such money or property is to be paid or delivered for the benefit of a minor, the court may direct that all or any part of the money or the property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Section 1430 of the Probate Code. If the money or the value of other property to be paid or delivered under such compromise, covenant, order or judgment exceeds ten thousand dollars (\$10,000), and there is no guardian of the estate of the minor or incompetent person, such court shall require a guardian of the estate to be appointed and shall direct that the money or the other property be paid or delivered to the guardian, or in lieu of the appointment of a guardian of the estate, shall require that the remaining balance of any money paid or to be paid under such compromise, covenant, order or judgment, after payment of all expenses, costs and fees as approved and allowed by the court, be deposited in a bank or banks, or a trust company or companies, or be invested in an account or accounts in an insured savings and loan association or associations, or be invested in shares of an insured credit union, or in a single-premium deferred annuity issued by an admitted life insurer subject to withdrawal only upon order of the court, and as to other property to be paid or delivered, the court shall prescribe such conditions as it may deem to the best interests of the minor or incompetent person.

Notwithstanding any other provision of law, upon approval of a compromise of, or the execution of a covenant not to sue on, a minor's disputed claim, or approval of a compromise of a pending action or proceeding to which a minor is a party, or giving judgment for such a person, providing for the payment or delivery of money or other property, in any case to which this section applies, the court making the order or giving judgment, and as a part thereof, may expressly retain jurisdiction of any part or all of the money paid, delivered, deposited, or invested until the minor reaches the age of 18 years.

Upon approval of a compromise of, or the execution of a covenant not to sue on, a minor's disputed claim, or approval of a compromise of a pending action or proceeding to which a minor or incompetent person is a party, or giving judgment for such a person, providing for

the payment or delivery of money or other property, the court making the order or giving judgment, and as a part thereof, shall make a further order authorizing and directing a parent of the minor or guardian of the minor or incompetent person, or the payer of any money to be paid for the benefit of such person, to pay, from the money or other property to be paid or delivered, such reasonable expenses (medical or otherwise and including reimbursement to a parent or guardian), costs and attorney's fees as the court shall approve and allow therein. The remaining balance of such money or other property shall be paid, delivered or deposited as hereinabove provided.

The term "account in an insured savings and loan association" used in this section means shares issued by a federal savings and loan association, or investment certificates issued by a state-chartered building and loan association or savings and loan association doing business in this state which is an "insured institution" as defined in Title IV of the National Housing Act, or shares issued by a state-chartered building and loan association or savings and loan associations doing business in this state which does not issue investment certificates and which is an "insured institution" as defined in Title IV of the National Housing Act.

The term "shares of an insured credit union" means shares issued by a credit union, either federally chartered or state licensed, which are insured under Title II of the Federal Credit Union Act.

The term "single-premium deferred annuity" means an annuity offered by an admitted life insurer for the payment of a one-time lump-sum premium and for which the insurer neither assesses any initial charges or administrative fees against the premium paid nor exacts or assesses any penalty for withdrawal of any funds by the annuitant after a period of five years.

Where reference is made in this section to "guardian of the estate" such reference shall be deemed to include "conservator of the estate," and reference to "incompetent person" shall be deemed to include "a person for whom a conservator may be appointed."

SEC. 18. Section 1553 of the Probate Code is amended to read:

1553. At the expiration of a year from the time of his appointment, and as often thereafter as he may be required by the court, but no less frequently than biennially, the guardian must present his account to the court for settlement and allowance. When an account is rendered by two or more joint guardians, the court, in its discretion, may allow the same upon the oath of any of them.

SEC. 19. Section 1554 of the Probate Code is amended to read:

1554. No account of the guardian of an incompetent person who is or has been during the guardianship confined in a state hospital in this state shall be settled or allowed unless notice of the time and place of hearing and a copy of the account have been given to the Director of Health at his office in Sacramento at least 15 days before the hearing. The statute of limitations shall not run against any claim of the State Department of Health against the estate of the

incompetent for board, care, maintenance or transportation if the account is settled without giving the notice prescribed above.

SEC. 20. Section 1570 of the Probate Code is amended to read:

1570. The superior court may appoint a guardian of the person and estate, or person or estate, of a minor or incompetent person who resides out of the state and who is within the county, or who has estate within the county, and who has no guardian within the state, upon petition of any relative or friend of such person. A minor may, if he is 14 years of age or older, petition to have a guardian appointed for himself.

If the nonresident ward is an incompetent person, the appointment shall be made in compliance with Section 1461 of this code. If the nonresident ward is a minor, the appointment shall be made in compliance with Section 1441 of this code.

The guardianship which is first granted of a nonresident ward extends to all the estate of the ward within this state, and the court of no other county has jurisdiction.

SEC. 21. Section 1580 of the Probate Code is amended to read:

1580. A guardian however appointed may be removed by the court, after notice and hearing, substantially as provided in Section 1755 of this code, for any of the following causes:

- (1) For waste or mismanagement of the estate, or abuse of his trust;
- (2) For failure to file an inventory or to render an account within the time allowed by law, or for continued failure to perform his duties;
- (3) For incapacity to perform his duties suitably;
- (4) For gross immorality or conviction of a felony;
- (5) For having an interest adverse to the faithful performance of his trust;
- (6) In the case of a guardian of an estate, for insolvency or bankruptcy;
- (7) When it is no longer necessary that the ward should be under guardianship; or
- (8) In any other case in which the court shall in its discretion deem such removal to be in the best interests of the ward provided, in considering the best interests of the ward, if the guardian was appointed by will or deed, the court shall take that fact into consideration.
- (9) In the case of a guardian of the person, failure to comply with the provisions of Section 1500.

SEC. 22. Section 1606 is added to the Probate Code, to read:

1606. In any proceeding for the appointment of a guardian for the person and estate or person or estate of an alleged incompetent person or for restoration of his capacity under this division, the alleged or adjudicated incompetent person shall be represented by legal counsel at the hearing, if he so chooses, irrespective of whether he appears to have capacity to make such choice. If he so chooses, but is unable to retain legal counsel, the court shall, at the time of the

hearing, appoint the public defender or other attorney to represent him.

The court shall hear and determine the matter according to the laws and procedure relating to civil actions, including trial by jury if demanded.

In any case in which the alleged or adjudicated incompetent person is furnished legal counsel, either through the public defender or private counsel appointed by the court, upon conclusion of the hearing, the court shall make a determination of the present ability of the alleged or adjudicated incompetent person to pay all or a portion of the costs of such counsel. If the court determines that the alleged or adjudicated incompetent person has the present ability to pay all or a portion of the costs, it shall order him or the guardian of the estate to pay the sum, in the case of the public defender, to the county, and in the case of private counsel, to such counsel, in any installments and manner which is believed reasonable and compatible with his financial ability. If a guardian is not appointed for the alleged incompetent person, execution may be issued on the order in the same manner as on a judgment in a civil action.

SEC. 23. Section 1631 of the Probate Code is amended to read:

1631. An appeal from an order appointing a guardian for an incompetent person shall stay the power of the guardian, except that, for the purpose of preventing injury or loss to person or property, the court making the appointment may direct the exercise of the powers of the guardian, from time to time, as though no appeal were pending, and all acts of the guardian pursuant to such directions shall be valid, irrespective of the result of the appeal.

SEC. 24. Section 1645 of the Probate Code is amended to read:

1645. (a) The appointment and qualification of a general guardian terminates the powers of the special guardian except for the rendering of his account, unless by reason of an appeal therefrom or other cause the court appointing the general guardian otherwise orders. If so ordered, the court shall fix the time for the termination of the powers of the special guardian.

(b) Except as provided in subdivision (a) the powers of the special guardian shall not extend beyond 30 days unless the court, with or without notice as it may require, for good cause shall extend such powers pending the final determination of the court upon the petition for appointment of a guardian.

SEC. 25. Section 1751 of the Probate Code is amended to read:

1751. Upon petition as provided in this chapter, the superior court, if satisfied by sufficient evidence of the need therefor, shall appoint a conservator of the person and property or person or property of any adult person who, in the case of a conservatorship of the person, is unable properly to provide for his personal needs for physical health, food, clothing or shelter, and, in the case of a conservatorship of the property, is substantially unable to manage his own financial resources, or resist fraud or undue influence, or for whom a guardian could be appointed under Division 4 of this code,

or who voluntarily requests the same and to the satisfaction of the court establishes good cause therefor, or who is an absentee as defined in Section 1751.5. "Substantial inability" shall not be evidenced solely by isolated incidents of negligence or improvidence. The court, in its discretion, may appoint one or more conservators.

SEC. 26. Section 1754 of the Probate Code is amended to read:

1754. Any person or any relative or friend of any person, other than a creditor of the proposed conservatee, may file a verified petition alleging that the appointment of a conservator is required. The petition shall set forth, so far as they are known to the petitioner, the names and residences of the spouse, if any, and of the relatives of the proposed conservatee within the second degree. Upon the filing of the petition, the clerk shall set the petition for hearing by the court. Notice of the nature of the proceedings and of the time and place of the hearing on the petition shall be mailed by the petitioner to the spouse, if any, and to each of such relatives, and if the proposed conservatee is an "absentee" as defined in Section 1751.5, to the secretary concerned or to the head of the United States department or agency concerned, as the case may be, at least 15 days before such hearing date. If the proposed conservatee is an "absentee," as defined in Section 1751.5, such notice shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the proceedings will be held.

If the petition is filed by a person other than the proposed conservatee, the clerk shall issue a citation directed to the proposed conservatee setting forth the time and place of the hearing. The citation shall include a specific delineation of the legal standards by which the need for a conservatorship is adjudged as stated in Section 1751, and shall state that the proposed conservator may be adjudged unable to provide for his personal needs or manage his financial resources, and by reason thereof, a conservator may be appointed for his person and property or person or property, that such adjudication may transfer the proposed conservatees' right to contract, manage and control his property, and to fix his residence to the appointed conservator, that the court or a court investigator will explain the nature, purpose and effect of the proceeding to the proposed conservatee and answer questions concerning such explanation, that the proposed conservatee shall have the right to appear at such hearing and oppose such petition, that he shall have the right to legal counsel of his own choosing, including the right to have legal counsel appointed for him by the court if he is unable to retain one, and that he has the right to a jury trial if he so desires.

The citation, and a copy of the petition, shall be served upon the proposed conservatee in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court, at least 10 days before the time of the hearing. No such citation shall, however, be required if the proposed conservatee is an "absentee" as defined in Section 1751.5.

The proposed conservatee, if he is the petitioner, or if he is in the state at date of service and, if able to attend, shall be produced at the hearing, and, if not able to attend by reason of medical inability, such inability shall be established by the affidavit or certificate of a duly licensed medical practitioner. If the proposed conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of such religion, an affidavit as to his or her medical inability to attend by an accredited practitioner shall be acceptable. Emotional or psychological instability shall not be considered good cause for the absence of the proposed conservatee within the meaning of this section, unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the proposed conservatee. The medical affidavit shall be evidence only of the proposed conservatee's medical inability to attend the hearing and shall not be considered in determining the issue of need for appointment of a conservator. If the proposed conservatee is an "absentee" as defined in Section 1751.5 his inability to attend the hearing shall be established by a certificate complying with Section 1283 of the Evidence Code, showing the determination of the Secretary of the Military Department or the head of the department, or agency concerned or his delegate, as the case may be, that the "absentee" is in missing status.

Upon receipt of the affidavit or certificate attesting to the proposed conservatee's inability to attend the hearing, the court shall appoint a court investigator to personally interview the proposed conservatee and to inform him as to the contents of the citation, the nature, purpose and effect of the proceeding, and of his right to oppose the proceeding, attend the hearing, have the matter tried by jury and be represented by counsel. The investigator shall also determine whether it appears that the proposed conservatee is unable to attend the hearing, whether the proposed conservatee wishes to contest the establishment of the conservatorship, whether the proposed conservatee wishes to be represented by counsel, and if so, whether the proposed conservatee has retained counsel, and if not, the name of an attorney the proposed conservatee wishes to retain.

If the proposed conservatee does not wish to contest the establishment of the guardianship, the investigator shall determine if the proposed conservatee objects to the proposed conservator, or if he prefers another person to act as conservator.

The court investigator shall report his findings, including the proposed conservatee's express statement concerning representation by counsel, in writing, to the court at least five days before the date set for hearing.

As used in this chapter, a "court investigator" or "investigator" is a person trained in law who is an officer or special appointee of the court with no personal or other beneficial interest in the proceedings.

Whenever a notice to any officer or agency of this state or of the United States would be required upon a petition for the appointment of a guardian of an alleged incompetent person a like notice shall be given of a petition under this chapter. Any officer or agency of this state or of the United States, or the authorized delegate thereof, or any relative or friend of the proposed conservatee, or the proposed conservatee himself, may appear and oppose the petition.

SEC. 27. Section 1754.1 is added to the Probate Code, to read:

1754.1. If the proposed conservatee is not the petitioner, prior to the appointment of a conservator for the person and estate or person or estate of a proposed conservatee, the court shall inform the proposed conservatee as to the nature and purpose of the proceeding, that the appointment of a conservator for his person and estate or person or estate is a legal adjudication of his inability properly to provide for his personal needs or manage his own financial resources or of his incompetency, the effect of such an adjudication on his basic rights, the identity of the person who has been nominated as his conservator, that he has right to oppose such proceeding, to have the matter tried by jury, and to be represented by legal counsel if he chooses. After communicating such information to the person and prior to the appointment of his conservator, the court shall consult the person to determine his opinion concerning the appointment.

If the proposed conservatee is unable to attend the hearing and such inability has been medically certified pursuant to Section 1754, the provisions of this section shall not apply.

SEC. 28. Section 1801 of the Probate Code is amended to read:

1801. A conservator shall be designated by that title. Before his appointment shall be effective, he must take an oath that he will perform the duties of his office according to law, which oath shall be filed in the proceedings. The appointment as conservator and the taking and filing of such oath shall thereafter be evidenced by the issuance by the clerk of the court of letters of conservatorship in substantially the same form as letters of administration. Before letters of conservatorship may issue, a copy of the order appointing the conservator shall be served by mail upon the conservatee. Such order shall contain the names, addresses, and telephone numbers of the conservator, the conservatee's attorney, if any, and the court investigator, if any.

SEC. 29. Section 1851 of the Probate Code is amended to read:

1851. Every conservator of the person of a conservatee has the care, custody and control of the conservatee and may fix the residence of the conservatee at any place within this state, but not elsewhere without the permission of the court.

No person for whom a conservator of the person has been appointed shall be placed in a mental health treatment facility against his will. Involuntary civil mental health treatment for a conservatee shall be obtained only pursuant to the provisions of

Article 1 (commencing with Section 5150), Article 1.5 (commencing with Section 5170), Article 2 (commencing with Section 5200), Article 3 (commencing with Section 5225), Article 4 (commencing with Section 5250), Article 4.5 (commencing with Section 5260), Article 5 (commencing with Section 5275), Article 6 (commencing with Section 5300), Article 7 (commencing with Section 5325), Article 8 (commencing with Section 5340), and Chapter 3 (commencing with Article 5350) of Division 5 of the Welfare and Institutions Code.

(a) All petitions filed under this chapter shall be set for hearing within 30 days of the filing of such petitions.

(b) The conservator shall promptly advise the court issuing the letters of conservatorship in writing of all changes in the residence of the conservatee.

SEC. 30. Section 1851.1 is added to the Probate Code, to read:

1851.1. Each conservatorship initiated pursuant to this chapter shall be reviewed by the court one year after the appointment of the conservator and biennially thereafter. The court investigator shall visit the conservatee and personally inform the conservatee that he is under a conservatorship and the name of his conservator. The investigator shall also determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, and whether the present conservator is acting in the best interests of the ward.

The findings of the court investigator, including the facts upon which such findings are based, shall be certified in writing to the court within 15 days of the date of review.

If the conservatee wishes to petition the court for termination of the proceeding or for removal of the existing conservator, the court shall notify the attorney of record for the conservatee, if any, or appoint the public defender or other attorney to file the petition and represent the conservatee at the hearing or trial.

If, based upon information contained in the court investigator's report, the court determines that a hearing for termination of the proceeding or removal of the existing conservator is in the best interests of the conservatee, the court shall notify the attorney of record for the conservatee, if any, or appoint the public defender or other attorney to file the petition and represent the conservatee at the hearing or trial.

If the court investigator is unable to locate the conservatee, the court shall serve notice upon the conservator to produce the conservatee within 15 days of the receipt of such notice or show cause why the conservatorship should not be terminated. If the conservatee is not produced within the time prescribed and if no good cause is shown for not producing the conservatee, the court shall terminate the conservatorship and order the conservator to file an accounting, if the conservatorship is of the estate.

SEC. 31. Section 1851.2 is added to the Probate Code, to read:

1851.2. For each conservatorship established prior to the

effective date of the amendments to this division adopted at the 1975-76 Regular Session of the Legislature, review pursuant to the terms of Section 1851.1 shall commence at the time of the next financial accounting, but in all cases within three years from the effective date of such amendments.

SEC. 32. Section 1853 of the Probate Code is amended to read:

1853. On the application of the conservator, made at any time, which application may be included in a petition filed pursuant to Section 1754, the court may grant to a conservator of the estate or of the person and estate of a conservatee any or all of the following additional powers, which may be exercised with or without notice, hearings, confirmation, or approval of the court and which may be exercised without regard to whether or not other requirements of this code shall have been complied with, except such requirements as shall have been specifically and expressly provided, whether directly or by reference, in the order granting such additional powers:

To institute and maintain all actions and other proceedings for the benefit of and to defend all actions and other proceedings against the conservatee or the conservatorship estate; to take, collect and hold the property of the conservatee; to contract for the conservatorship and to perform outstanding contracts and thereby bind the conservatorship estate; to operate at the risk of the estate any business, farm or enterprise constituting an asset of the conservatorship, to grant and take options; to sell at public or private sale; to create by grant or otherwise easements and servitudes; to borrow money and give security for the repayment thereof; to purchase real or personal property; to alter, improve and repair or raze, replace and rebuild conservatorship property; to let or lease property for any purpose including exploration for and removal of gas, oil and other minerals and natural resources and for any period, including a term commencing at a future time; to loan money on adequate security; to exchange conservatorship property; to sell on credit provided that any unpaid portion of the selling price shall be adequately secured; to vote in person or by proxy all shares and securities held by the conservator; to exercise stock rights and stock options; to participate in and become subject and to consent to the provisions of any voting trust and of any reorganization, consolidation, merger, dissolution, liquidation or other modification or adjustment affecting conservatorship property; to effect necessary insurance for the proper protection of the estate, to pay, collect, compromise, arbitrate or otherwise adjust any and all claims, debts or demands upon the conservatorship, including those for taxes; to abandon valueless property, and to employ attorneys, accountants, investment counsel, agents, depositaries and employees and to pay the expense therefor from the conservatorship estate.

Such additional powers shall be in addition to the general powers of conservators. The granting of said additional powers shall be discretionary with the court. Notice of the hearing of the application

therefor, except when the application is included in a petition filed pursuant to Section 1754, shall be given in the manner provided in Section 1200, including notice to the conservatee, and whenever any conservatee is or has been during the conservatorship confined in a state hospital in this state, such notice also shall be given by the conservator to the Director of the State Department of Health at his office in Sacramento. When additional powers are granted to a conservator, his letters shall state that he has the powers authorized in this section. If such additional powers are granted by a subsequent order, new letters shall be issued and shall state that he has such power or powers as have been granted. The grant of additional powers to the conservator shall not affect the right of the conservator to petition the court as provided in Section 1860.

SEC. 33. Section 1951 of the Probate Code is amended to read:

1951. A conservator, however appointed, may be removed by the court, after notice and hearing as provided by Section 1755, for any of the following causes:

1. For waste or mismanagement of the estate, or abuse of his trust;
2. For failure to file an inventory or to render an account within the time allowed by law or by court order, or for continued failure to perform his duties;
3. For incapacity to perform his duties suitably;
4. For gross immorality or conviction of a felony;
5. For having an interest adverse to the faithful performance of his trust;
6. In the case of a conservator of an estate, for insolvency or bankruptcy; or
7. When the conservatorship is no longer required.
8. In any other case in which the court shall in its discretion deem such removal to be for the best interests of the conservatee.
9. In the case of a conservator of the person, failure to comply with the provisions of Section 1851.

SEC. 34. Section 2006 is added to the Probate Code, to read:

2006. In any proceeding for the appointment of a conservator for the person and estate or person or estate of a proposed conservatee or for termination of a conservatorship under this division, the proposed conservatee shall be represented by legal counsel at the hearing, if he so chooses, irrespective of whether he appears to have capacity to make such choice. If he so chooses but is unable to retain legal counsel, the court shall, at the time of the hearing, appoint the public defender or other attorney to represent him.

The court shall hear and determine the matter according to the laws and procedure relating to civil actions, including trial by jury if demanded.

In any case in which the proposed conservatee or conservatee is furnished legal counsel, either through the public defender or private counsel appointed by the court, upon the conclusion of the hearing, the court shall make a determination of the present ability of the proposed conservatee or conservatee to pay all or a portion of

the costs of such counsel. If the court determines that the proposed conservatee or conservatee has the present ability to pay all or a portion of the costs, it shall order him or the conservator of the estate to pay the sum, in the case of the public defender, to the county, and in the case of private counsel, to such counsel, in any installments and manner which is believed reasonable and compatible with his financial ability. If a conservator is not appointed for the proposed conservatee, execution may be issued on the order in the same manner as on a judgment in a civil action.

SEC. 35. Section 2206 of the Probate Code is amended to read:

2206. (a) The appointment and qualification of a conservator terminates the powers of the temporary conservator except for the rendering of his account, unless by reason of an appeal therefrom or other cause the court appointing the conservator otherwise orders. If so ordered the court shall fix the time for the termination of the powers of the temporary conservator.

(b) Except as provided in subdivision (a) the powers of the temporary conservator shall not extend beyond 30 days unless the court, with or without notice as it may require, for good cause shall extend such powers pending the final determination of the court upon the petition for appointment of a conservator.

SEC. 36. There are no state-mandated local costs within the meaning of 2231 of the Revenue and Taxation Code imposed on local governmental entities in 1977-78 by this act. However, there are state-mandated local costs in this act in subsequent years that require reimbursement under Section 2231 of the Revenue and Taxation Code which can be handled in the regular budget process.

SEC. 37. Section 17.5 of this act shall become operative only if this bill and Senate Bill No. 1789 are both chaptered and become effective January 1, 1977, both amend Section 1510 of the Probate Code and this bill is chaptered after Senate Bill No. 1789, in which case Section 17 of this act shall not become operative.

SEC. 38. This act shall become operative on July 1, 1977.

CHAPTER 1358

An act to amend Sections 103021, 103300, 103301, 103302, and 103303 of, to amend the heading of Article 6 (commencing with Section 103300) of Chapter 5 of Part 15 of Division 10 of, and to add Sections 103022, 103301.5, and 103301.6 to, the Public Utilities Code, relating to transit districts.

[Approved by Governor September 29, 1976. Filed with
Secretary of State September 30, 1976.]

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