

AMENDED IN SENATE APRIL 24, 2006

SENATE BILL

No. 1550

Introduced by Senator Figueroa
(Principal coauthors: Senators Alquist and Scott)

February 23, 2006

An act to add Chapter 6 (commencing with Section 6500) to Division 3 of the Business and Professions Code, and to amend Sections 2340 and 2342 of, and to add Section 60.1 to, the Probate Code, relating to professional fiduciaries.

LEGISLATIVE COUNSEL'S DIGEST

SB 1550, as amended, Figueroa. Professional Fiduciaries Act.

Existing law requires all private professional conservators, private professionals guardians, and private professional trustees to file a specified annual statement, under penalty of perjury, with the clerk of the court. Existing law prohibits a court from appointing a person as a conservator, guardian or trustee unless he or she is registered in the Statewide Registry maintained by the Department of Justice and has filed the annual statement with the court.

This bill would enact the Professional Fiduciaries Act, which would create the Board of Professional Fiduciaries in the Department of Consumer Affairs and would require the board to license and regulate professional fiduciaries, as specified. The act would require a person acting or holding himself or herself out as a professional fiduciary to be licensed as a professional fiduciary, unless he or she is licensed as an attorney, and would require a licensee to meet certain other requirements, including filing an application for licensure signed under penalty of perjury, payment of licensing fees set by the board, and annually filing a statement containing specified information under

penalty of perjury. The act would provide for the deposit of licensing fees in the Professional Fiduciaries Fund, which the bill would create and which would be the successor fund to certain fees in the Statewide Registry. The board would become inoperative on July 1, 2011, and be repealed on January 1, 2012, and its responsibilities and jurisdiction would be transferred to the Department of Justice.

This bill would also require the statement filed with the court by a private professional conservator, private professional guardian, or private professional trustee under penalty of perjury to include evidence that he or she is certified as a professional fiduciary. The bill would prohibit a court from appointing a person as a professional fiduciary unless he or she is certified as a professional fiduciary. ~~The bill would also prohibit a court from appointing a public agency or financial institution to act as a conservator, guardian, trustee, personal representative, or agent under a durable power of attorney, unless the agency or institution certifies that it has at least one professional fiduciary on its staff and that all of its professional fiduciaries are licensed.~~

Because this bill would require the filing of documents signed under penalty of perjury, it would expand the crime of perjury and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California's population is growing at an increasing rate,
- 4 and the growth in the number of people 65 years of age or older
- 5 is surpassing that in other states. The number of California's
- 6 population 65 years of age or older will grow from 3.6 million
- 7 people in the year 2000, to 6.2 million people in the year 2020,
- 8 an increase of 171 percent.

1 (b) As the population of California continues to grow and age,
2 an increasing number of people in the state are unable to provide
3 properly for their personal needs, manage their financial
4 resources, or resist fraud or undue influence as well as fiscal,
5 emotional, and physical harm. In addition, there is an increasing
6 use of trusts and durable powers of attorney by individuals
7 seeking to provide for potential incapacity. These vulnerable
8 members of society have an expectation that they and their
9 property will be protected by a fair system with high standards of
10 care.

11 (c) One result of these trends is the growing number of people
12 acting as conservators, guardians, trustees, attorneys in fact, and
13 estate administrators on behalf of other persons or their estates.
14 The persons acting in one or more of these capacities are known
15 as professional fiduciaries.

16 (d) Professional fiduciaries are not adequately regulated at
17 present. This lack of regulation can result in the neglect or the
18 physical, emotional or financial abuse of the vulnerable clients
19 that professional fiduciaries are supposed to serve. Unless there
20 is a strengthened accountability, abuses of people who are unable
21 to take care of themselves or their property by professional
22 fiduciaries will increase.

23 (e) Creation of a program to license and regulate professional
24 fiduciaries is necessary to protect the public health, safety, and
25 welfare.

26 SEC. 2. Chapter 6 (commencing with Section 6500) is added
27 to Division 3 of the Business and Professions Code, to read:

28
29 CHAPTER 6. PROFESSIONAL FIDUCIARIES

30
31 Article 1. General Provisions

32
33 6500. This chapter shall be known as the Professional
34 Fiduciaries Act.

35 6501. As used in this chapter, the following terms have the
36 following meanings:

37 (a) "Act" means this chapter.

38 (b) "Board" means the Board of Professional Fiduciaries
39 within the Department of Consumer Affairs, established pursuant
40 to Section 6510.

1 (c) “Client” means an individual served by a professional
2 fiduciary.

3 (d) “Department” means the Department of Consumer Affairs.

4 (e) “Licensee” means a person licensed under this chapter as a
5 professional fiduciary.

6 (f) “Professional fiduciary” means a person who acts as a
7 conservator, guardian, trustee, personal representative, agent
8 under a durable power of attorney for health care, or agent under
9 a durable power of attorney for finances, for two or more persons
10 not related to the professional fiduciary or to each other by blood,
11 adoption, marriage, or registered domestic partnership.
12 ~~Professional fiduciary also means a person employed by a public~~
13 ~~agency or financial institution, acting as a conservator, guardian,~~
14 ~~trustee, personal representative, or agent under a durable power~~
15 ~~of attorney, who makes substantive fiduciary decisions or~~
16 ~~supervises persons who make substantive fiduciary decisions.~~
17 *“Professional fiduciary” does not mean a bank or other entity*
18 *authorized to conduct the business of a trust company, or any*
19 *public officer or public agency, including a public guardian,*
20 *public conservator, or other agency of the State of California.*

21
22 Article 2. Administration

23
24 6510. (a) There is in the Department of Consumer Affairs a
25 Board of Professional Fiduciaries, which consists of seven
26 members, four of whom shall be public members and three of
27 whom shall be licensees actively engaged as professional
28 fiduciaries in this state.

29 (b) This section shall become inoperative on July 1, 2011, and,
30 as of January 1, 2012, is repealed, unless a later enacted statute,
31 that becomes operative on or before January 1, 2011, deletes or
32 extends the dates on which it becomes inoperative and is
33 repealed. The repeal of this section renders the board subject to
34 the review required by Division 1.2 (commencing with Section
35 473).

36 Notwithstanding any other provision of law, upon the repeal of
37 this section, the responsibilities and jurisdiction of the board shall
38 be transferred to the Department of Justice.

39 6511. (a) Members of the board shall be appointed for terms
40 of four years, and shall hold office until the appointment of their

1 successors or until one year has elapsed since the expiration of
2 the term for which they were appointed, whichever first occurs.
3 Vacancies shall be filled by the appointing power for the
4 unexpired portion of the terms in which they occur. No person
5 shall serve as a member of the board for more than two
6 consecutive terms.

7 (b) The Governor shall appoint the three licensee members.
8 The board members appointed by the Governor shall be subject
9 to approval by the Senate.

10 (c) The Senate Committee on Rules and the Speaker of the
11 Assembly shall each appoint two public members.

12 ~~(d) Members of the board shall serve at the pleasure of the~~
13 ~~appointing authority.~~

14 *(d) Members of the board may be removed from office by the*
15 *appointing authority for neglect of any duty imposed by state*
16 *law, for incompetence, or for unprofessional or dishonorable*
17 *conduct.*

18 6512. Each member of the board shall receive a per diem and
19 expenses as provided in Section 103.

20 6513. The board shall appoint, prescribe the duties of, and fix
21 the salary of, an executive officer. The board may also employ,
22 subject to civil service and other provisions of law, other
23 employees as may be necessary to carry out the provisions of this
24 chapter under the direction of the executive officer.

25 This section shall become inoperative on July 1, 2011, and, as
26 of January 1, 2012, is repealed, unless a later enacted statute,
27 which becomes effective on or before January 1, 2011, deletes or
28 extends the dates on which it becomes inoperative and is
29 repealed.

30 6514. (a) The board may convene from time to time as it
31 deems necessary.

32 (b) Four members of the board constitute a quorum for the
33 transaction of business at any meeting.

34 (c) It shall require the affirmative vote of a majority of those
35 members present at a meeting, assuming that those members
36 constitute at least a quorum, to pass any motion, resolution, or
37 measure.

38 (d) The board shall annually elect one of its members to act as
39 president and one member to act as vice president, who shall
40 hold their respective positions at the pleasure of the board. The

1 president or the executive officer may call meetings of the board
2 and any duly appointed committee at a specified time and place.

3 (e) The board shall keep a complete record of all its
4 proceedings and all licenses issued, renewed, or revoked, and a
5 detailed statement of receipts and disbursements.

6 6515. The duty of administering and enforcing this chapter is
7 vested in the board and the executive officer subject to, and
8 under the direction of, the board. In the performance of this duty,
9 the board and the executive officer have all of the powers of, and
10 are subject to all of the responsibilities vested in and imposed
11 upon, the head of a department by Chapter 2 (commencing with
12 Section 11150) of Part 1 of Division 3 of Title 2 of the
13 Government Code.

14 6516. Protection of the public shall be the highest priority for
15 the board in exercising its licensing, regulatory, and disciplinary
16 functions. Whenever the protection of the public is inconsistent
17 with other interests sought to be promoted, the protection of the
18 public shall be paramount.

19 6517. The board may adopt, amend, or repeal, in accordance
20 with the provisions of the Administrative Procedure Act (Chapter
21 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
22 Title 2 of the Government Code), regulations necessary to enable
23 the board to carry into effect the provisions of law relating to this
24 chapter.

25 6518. (a) The board shall be responsible for administering
26 the licensing and regulatory program established in this chapter.

27 (b) The board shall approve classes qualifying for prelicense
28 education, as well as classes qualifying for annual continuing
29 education required by this chapter. The board shall maintain a
30 current list of all approved classes.

31 (c) The board shall arrange for the preparation and
32 administration of licensing examinations.

33 6519. Board members shall be immune from liability for any
34 act taken pursuant to this chapter, provided that they have acted
35 in good faith.

36 6520. The board shall adopt a Professional Fiduciaries' Code
37 of Ethics. *The Professional Fiduciaries' Code of Ethics shall be*
38 *consistent with all statutory requirements, as well as*
39 *requirements developed by the courts and the Judicial Council.*
40 The Professional Fiduciaries' Code of Ethics shall be provided

1 electronically on the board’s Internet Web site and to persons
2 who request an application for licensure. The board may amend
3 the Professional Fiduciaries’ Code of Ethics from time to time, as
4 it deems necessary, provided that no amendment shall be
5 effective with regard to a licensee until the licensee’s next annual
6 license renewal cycle, as specified in subdivision (a) of Section
7 6542, is completed. Any amendment to the Professional
8 Fiduciaries’ Code of Ethics shall be included in the license
9 renewal materials sent to a licensee.

10
11 Article 3. Licensing
12

13 6530. (a) No person shall act or hold himself or herself out to
14 the public as a professional fiduciary unless that person is
15 licensed as a professional fiduciary in accordance with the
16 provisions of this chapter.

17 (b) This section does not apply to a person licensed as an
18 attorney under the State Bar Act (Chapter 4 (commencing with
19 Section 6000)).

20 6531. No professional fiduciary shall operate with an expired,
21 suspended, or revoked license or without a valid licensing bond,
22 as required by Section 6543.

23 6532. A person who has been licensed by the board may
24 identify himself or herself as a “licensed professional fiduciary.”

25 6533. In order to meet the qualifications for licensure as a
26 professional fiduciary a person shall meet all of the following
27 requirements:

28 (a) Be at least 21 years of age.

29 (b) Be a United States citizen, or be legally admitted to the
30 United States.

31 (c) Have not committed any acts that are ground for denial of
32 a license under Section 480 or 6537.

33 (d) Submit fingerprint images for Department of Justice and
34 Federal Bureau of Investigation criminal offender record
35 information, as provided in Section 11077.1 of the Penal Code.

36 (e) Have completed the required prelicensing education
37 described in Section 6538.

38 (f) (1) Have passed the licensing examination administered by
39 the board pursuant to Section 6539.

1 (2) Notwithstanding any other provision of law, any person
2 who holds a valid, unexpired registration with the Statewide
3 Registry maintained by the Department of Justice under Chapter
4 13 (commencing with Section 2850) of Part 4 of Division 4 of
5 the Probate Code, on January 1, 2007, shall not be required to
6 pass the licensing examination required by Section 6539 in order
7 to become licensed. However, a person registered with the
8 Statewide Registry on January 1, 2007, who becomes licensed
9 under this chapter without passing the licensing examination
10 shall complete 30 hours of prelicensing education courses, as
11 required by subdivision (a) of Section 6538, by July 1, 2007.

12 (g) Have at least one of the following:

13 (1) A baccalaureate degree of arts or sciences from a college
14 or university accredited by a nationally recognized accrediting
15 body of colleges and universities or a higher level of education.

16 (2) An associate of arts or science degree from a college or
17 university accredited by a nationally recognized accrediting body
18 of colleges and universities, and at least five years of experience
19 with substantive fiduciary responsibilities working for a
20 professional fiduciary, public agency, or financial institution
21 acting as a conservator, guardian, trustee, personal representative,
22 or agent under a power of attorney.

23 (3) Registration with the Statewide Registry pursuant to
24 Chapter 13 (commencing with Section 2850) of Part 4 of
25 Division 4 of the Probate Code, prior to January 1, 2007.

26 (4) Experience of not less than three years, prior to January 1,
27 2007, with substantive fiduciary responsibilities working for a
28 public agency or financial institution acting as a conservator,
29 guardian, trustee, personal representative, or agent under a power
30 of attorney.

31 (h) Agree to adhere to the Professional Fiduciaries' Code of
32 Ethics.

33 (i) Consent to the board conducting a credit check on the
34 applicant.

35 (j) File a completed application for licensure with the board on
36 a form provided by the board and signed by the applicant under
37 penalty of perjury.

38 (k) Submit with the license application a nonrefundable
39 application fee, as specified in this chapter.

40 (l) File the bond with the board as described in Section 6542.

1 6534. (a) The board shall maintain the following information
2 in each licensee’s file, shall make this information available to a
3 court for any purpose, including the determination of the
4 appropriateness of appointing or continuing the appointment of,
5 or removing, the licensee as a conservator, guardian, or trustee,
6 and shall otherwise keep this information confidential, except as
7 provided in subdivisions (b) and (c) of this section:

8 (1) The names of the licensee’s current conservatees or wards
9 and the trusts currently administered by the licensee.

10 (2) The aggregate dollar value of all assets currently under the
11 licensee’s supervision.

12 (3) The licensee’s current addresses and telephone numbers
13 for his or her place of business and place of residence.

14 (4) Whether the licensee has ever been removed for cause as
15 conservator, guardian, or trustee or has ever resigned as
16 conservator, guardian, or trustee in a specific case, the
17 circumstances causing that removal or resignation, and the case
18 names, court locations, and case numbers associated with the
19 removal or resignation.

20 (5) The case names, court locations, and case numbers of all
21 conservatorship, guardianship, or trust cases that are closed for
22 which the licensee served as the conservator, guardian, or trustee.

23 (6) Whether the licensee has ever filed for bankruptcy or held
24 a financial interest in a business that filed for bankruptcy.

25 (b) The board shall make the information in paragraphs (2),
26 (4), and (6) of subdivision (a) available to the public.

27 (c) The board shall also publish information regarding
28 licensees on the Internet as specified in Section 27. The
29 information shall include, but shall not be limited to, information
30 regarding license status and the information specified under
31 subdivision (b).

32 6535. The board shall approve or deny licensure in a timely
33 manner to applicants who apply for licensure. Upon approval of
34 a license, the board shall notify the applicant of issuance of the
35 license, and shall issue a license certificate identifying him or her
36 as a “licensed professional fiduciary.”

37 6536. The board shall review all applications for licensure
38 and may investigate an applicant’s qualifications for licensure.
39 The board shall approve those applications that meet the

1 requirements for licensure, but shall not issue a license to any
2 applicant who meets any of the following criteria:

3 (a) Does not meet the qualifications for licensure under this
4 chapter.

5 (b) Has been convicted of a crime substantially related to the
6 qualifications, functions, or duties of a fiduciary.

7 (c) Has engaged in fraud or deceit in applying for a license
8 under this chapter.

9 (d) Has engaged in dishonesty, fraud, or gross negligence in
10 performing the functions or duties of a fiduciary, including
11 engaging in such conduct prior to January 1, 2007.

12 (e) Has been removed as a fiduciary by a court for breach of
13 fiduciary duty, including a removal prior to January 1, 2007, and
14 all appeals have been taken, or the time to file an appeal has
15 expired.

16 6537. The board may deny a license for the reasons specified
17 in Section 480 or 6536. An applicant notified of the denial of his
18 or her application for licensure shall have the right to appeal to
19 the board as specified in Chapter 2 (commencing with Section
20 480) of Division 1.5.

21 6538. (a) To qualify for licensure, an applicant shall have
22 completed 30 hours of prelicensing education courses provided
23 by an educational program approved by the board.

24 (b) To renew a license, a licensee shall complete 15 hours of
25 approved continuing education courses each year.

26 (c) The cost of any educational course required by this chapter
27 shall not be borne by any client served by a licensee.

28 6539. As a requirement for licensure, an applicant shall take
29 and pass the licensing examination administered by the board.
30 The board shall determine the frequency with which the
31 examination will be given. The board shall also determine the
32 frequency with which an applicant for reexamination may sit for
33 the examination. The board shall administer the examination
34 through a computer-based examination process and other means.

35 6540. Individuals, entities, agencies, and associations that
36 propose to offer educational programs qualifying for the
37 prelicensing educational or continuing educational requirements
38 of this chapter shall apply for and obtain the approval of the
39 board.

1 6541. (a) A license shall expire one year after it was issued
2 on the last day of the month in which it was issued.

3 (b) A license may be renewed by filing a renewal application
4 with the board, submitting proof of the licensee's compliance
5 with the continuing education requirements of this chapter, and
6 payment of the renewal fee set by the board, provided that the
7 licensee has not engaged in conduct that would justify the
8 board's refusal to grant the renewal. Acts justifying the board's
9 refusal to renew a license shall include any of the following:

10 (1) Conviction of a crime substantially related to the
11 qualifications, functions, or duties of a fiduciary.

12 (2) Fraud or deceit in obtaining a license under this chapter.

13 (3) Dishonesty, fraud, or gross negligence in performing the
14 functions or duties of a professional fiduciary.

15 (4) Removal by a court as a fiduciary for breach of fiduciary
16 duty if all appeals have been taken or the time to file an appeal
17 has expired.

18 (c) By operation of law, the board shall not renew the license
19 of a professional fiduciary whose license bond has lapsed or been
20 cancelled, reduced, or is otherwise no longer in effect. The
21 license may be renewed upon submission of proof of a valid
22 licensing bond, as required by Section 6542.

23 6542. (a) As a condition precedent to the issuance,
24 reinstatement, reactivation, renewal, or continued maintenance of
25 a license, an applicant or licensee shall file with the board a bond
26 of one hundred thousand dollars (\$100,000), executed by a
27 corporate surety admitted to do business in this state and
28 conditioned to compliance with this chapter.

29 (1) The total aggregate liability on the bond shall be limited to
30 one hundred thousand dollars (\$100,000).

31 (2) The bond may be terminated pursuant to Section 995.440
32 of, and Article 13 (commencing with Section 996.310) of
33 Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

34 (b) The bond required by this section shall be in favor of, and
35 be payable to, the people of the State of California and shall be
36 for the benefit of any person damaged by any fraud,
37 misstatement, misrepresentation, unlawful act or omission, or
38 failure to provide the services of the professional fiduciary or the
39 agents, representatives, or employees of the professional
40 fiduciary while acting within the scope of that employment or

1 agency and shall be payable upon the imposition of any judgment
2 against the licensee by a court, or disciplinary decision against
3 the licensee by the board.

4 6543. (a) A person who is awarded damages in an action or
5 proceeding for injuries caused by the acts of a person engaged in
6 the business of, or acting in the capacity of, a professional
7 fiduciary, in the performance of his or her duties as an
8 professional fiduciary, may recover damages from the bond
9 required by Section 6542. In an action brought by the Attorney
10 General, a district attorney, or a city attorney, the court may
11 order relief for benefit of the injured parties to be paid from the
12 bond.

13 (b) When any claim or claims against a bond have been paid
14 so as to reduce the principal amount of the bond remaining
15 available to pay claims below the principal amount required by
16 Section 6542, the licensee shall cease to act as a professional
17 fiduciary unless and until the bond has been reinstated up to the
18 minimum amount required by Section 6542.

19 (c) A payment from the bond shall not be considered the sole
20 remedy for action taken against a licensee.

21

22 Article 4. Practice Provisions

23

24 6560. A licensee shall keep complete and accurate records of
25 client accounts, and shall make those records available for audit
26 as may be ordered by the board.

27 6561. (a) A licensee shall initially, and annually thereafter,
28 file with the board a statement under penalty of perjury
29 containing the following:

30 (1) Her or his business address, telephone number, and
31 facsimile number.

32 (2) Whether or not he or she has been removed for cause that
33 involved fraud, misrepresentation, material omission,
34 misappropriation, theft, embezzlement, conversion, elder abuse,
35 child abuse, or gross negligence. The licensee may file an
36 additional statement of the issues and facts pertaining to the case.

37 (3) The case names, court locations, and case numbers for all
38 matters where the licensee has been appointed by the court.

39 (4) Whether he or she has been found by a court to have
40 breached a fiduciary duty.

1 (5) Whether he or she has resigned or settled a matter in which
2 a complaint has been filed, along with the case number and a
3 statement of the issues and facts pertaining to the allegations.

4 (6) Any licenses or professional certificates held by the
5 licensee.

6 (7) Any ownership or beneficial interests in any businesses or
7 other enterprises held by the licensee or by a family member that
8 receives or has received payments from a client of the licensee.

9 (8) Whether the licensee has ever filed for bankruptcy or held
10 a financial interest in a business that filed for bankruptcy.

11 (9) The name of any persons or entities that have an interest in
12 the licensee's professional fiduciary business.

13 (10) Whether the licensee has ever been convicted of a crime
14 that would have prevented the board from issuing a license.

15 (b) The statement by the licensee required by this section may
16 be filed electronically with the board, in a form approved by the
17 board. However, any additional statement filed under paragraph
18 (2) of subdivision (a) shall be filed in writing.

19
20 Article 5. Enforcement and Disciplinary Proceedings
21

22 6580. (a) The board may upon its own, and shall, upon the
23 receipt of a complaint from any person, investigate the actions of
24 any professional fiduciary. The board shall review a professional
25 fiduciary's alleged violation of statute or the Professional
26 Fiduciary's Code of Ethics and any other complaint referred to it
27 by the public, a public agency, or the department, and may
28 impose sanctions upon a finding of a violation or a breach of
29 fiduciary duty.

30 (b) Sanctions shall include any of the following:

31 (1) Administrative citations and fines as provided in Section
32 125.9 for violations of this chapter, the Professional Fiduciaries'
33 Code of Ethics, or any regulation adopted under this chapter.

34 (2) License suspension, probation, or revocation.

35 (c) The board shall provide on the Internet information
36 regarding any sanctions imposed by the board on licensees,
37 including, but not limited to, information regarding citations,
38 fines, suspensions, and revocations of licenses or other related
39 enforcement action taken by the board relative to the licensee.

1 6582. All proceedings against a licensee for any violation of
2 this chapter or any regulations adopted by the board shall be
3 conducted in accordance with the Administrative Procedure Act
4 (Chapter 5 (commencing with Section 11500) of Part 1 of
5 Division 3 of Title 2 of the Government Code), and shall be
6 prosecuted by the Attorney General's office, and the board shall
7 have all the powers granted therein.

8 6583. The board shall establish a system of administrative
9 citations and fines under Section 125.9 for violations of this
10 chapter, the Professional Fiduciaries' Code of Ethics, or any
11 regulation adopted under this chapter.

12 6584. A license issued under this chapter may be suspended,
13 revoked, denied, or other disciplinary action may be imposed for
14 one or more of the following causes:

15 (a) Conviction of any felony or any misdemeanor, if the
16 misdemeanor is substantially related to the functions and duties
17 of a professional fiduciary. The record of conviction, or a
18 certified copy thereof, is conclusive evidence of the conviction.

19 (b) Failure to notify the board of a conviction described in
20 subdivision (a) in accordance with Section 6561.

21 (c) Fraud or misrepresentation in obtaining a license.

22 (d) Fraud, dishonesty, corruption, willful violation of duty,
23 gross negligence or incompetence in practice, or unprofessional
24 conduct in, or related to, the practice of a professional fiduciary.
25 For purposes of this section, unprofessional conduct includes, but
26 is not limited to, acts contrary to professional standards
27 concerning any provision of law substantially related to the
28 duties of a professional fiduciary.

29 (e) Failure to comply with, or to pay a monetary sanction
30 imposed by, a court for failure to provide timely reports. The
31 record of the court order, or a certified copy thereof, is
32 conclusive evidence that the sanction was imposed.

33 (f) Failure to pay a civil penalty relating to the licensee's
34 professional fiduciary duties.

35 (g) The revocation of, suspension of, or other disciplinary
36 action against, any other professional license by the state of
37 California or by another state. A certified copy of the revocation,
38 suspension, or disciplinary action is conclusive evidence of that
39 action.

1 (h) Violation of this chapter or of the applicable provisions of
2 Division 4 (commencing with Section 1400), Division 4.5
3 (commencing with Section 4000), Division 4.7 (commencing
4 with Section 4600), and Division 5 (commencing with Section
5 5000) of the Probate Code or of any of the statutes, rules, or
6 regulations pertaining to duties or functions of a professional
7 fiduciary.

8
9 Article 6. Revenue

10
11 6590. All fees collected by the board shall be paid into the
12 Professional Fiduciary Fund in the State Treasury, which is
13 hereby created. The money in the fund shall be available to the
14 board for expenditure for the purposes of this chapter only upon
15 appropriation by the Legislature.

16 6591. The Professional Fiduciary Fund shall be the successor
17 fund to those funds deposited under the Statewide Registry with
18 the Department of Justice pursuant to Chapter 13 (commencing
19 with Section 2850) of Part 4 of Division 4 of the Probate Code.

20 6592. (a) The fee for a professional fiduciary examination
21 and reexamination shall be set by the board at the amount
22 necessary recover the actual costs to develop and administer the
23 examination.

24 (b) The license fee to obtain a professional fiduciary license
25 shall be set by the board.

26 (c) The renewal fee for a professional fiduciary license shall
27 be set by the board.

28 SEC. 3. Section 60.1 is added to the Probate Code, to read:

29 60.1. (a) "Professional fiduciary" means a person who is a
30 professional fiduciary as defined under subdivision (f) of Section
31 6501 of the Business and Professions Code.

32 (b) No person shall act or hold himself or herself out to the
33 public as a professional fiduciary unless he or she is licensed as a
34 professional fiduciary under Chapter 6 (commencing with
35 Section 6500) of Division 3 of the Business and Professions
36 Code.

37 SEC. 4. Section 2340 of the Probate Code is amended to read:

38 2340. (a) No superior court may appoint a person to carry out
39 the duties of a professional fiduciary unless he or she is licensed
40 as a professional fiduciary under Chapter 6 (commencing with

1 Section 6500) of Division 3 of the Business and Professions
2 Code.

3 (b) No superior court may appoint a private professional
4 conservator or private professional guardian, or permit any
5 person to continue to serve as a private professional conservator
6 or private professional guardian, pursuant to Chapter 5
7 (commencing with Section 2350) or Chapter 6 (commencing
8 with Section 2400) unless the conservator or guardian has filed
9 the information required by Sections 2342 and 2343 with the
10 clerk of the court in each county where a petition for appointment
11 has been filed.

12 (c) No superior court may appoint a private professional
13 trustee unless the trustee has filed the information required by
14 Sections 2342 and 2343 with the clerk of the court in each county
15 where a petition for appointment has been filed.

16 ~~(d) No superior court may appoint a public agency or financial
17 institution to act as a conservator, guardian, trustee, personal
18 representative, or agent under a durable power of attorney, unless
19 the public agency or financial institution certifies that it has at
20 least one professional fiduciary on its staff, and that all
21 professional fiduciaries on its staff are licensed pursuant to
22 Chapter 6 (commencing with Section 6500) of Division 3 of the
23 Business and Professions Code.~~

24 SEC. 5. Section 2342 of the Probate Code is amended to read:

25 2342. (a) All private professional conservators, private
26 professional guardians, and private professional trustees shall file
27 annually with the clerk of the court a statement, under penalty of
28 perjury, containing the following information:

29 (1) Evidence that he or she is licensed as a professional
30 fiduciary under Chapter 6 (commencing with section 6500) of
31 Division 3 of the Business and Professions Code.

32 (2) His or her educational background and professional
33 experience.

34 (3) At least three professional references.

35 (4) The names of the conservator's or guardian's current
36 conservatees or the trusts currently administered by the trustee.

37 (5) The aggregate dollar value of all assets currently under the
38 conservator's, guardian's, or trustee's supervision.

1 (6) The conservator's, guardian's, or trustee's addresses and
2 telephone numbers for his or her place of business and place of
3 residence.

4 (7) Whether the conservator, guardian, or trustee has ever been
5 removed for cause as conservator or guardian or trustee or has
6 resigned as conservator or guardian or trustee in a specific case,
7 the circumstances causing that removal or resignation, and the
8 case names, court locations, and case numbers.

9 (8) The case names, court locations, and case numbers of all
10 conservatorship, guardianship, or trust cases which are closed for
11 which the private professional conservator, private professional
12 guardian, or private professional trustee served as the
13 conservator, guardian, or trustee.

14 (b) Upon filing of a petition for appointment, a private
15 professional conservator, private professional guardian, and
16 private professional trustee shall state that he or she is a private
17 professional conservator or private professional guardian or
18 private professional trustee, and that the information required by
19 this section is on file with the clerk of the court.

20 (c) The clerk of the court shall order a background fingerprint
21 check from the Department of Justice and may request a
22 background fingerprint check from the Federal Bureau of
23 Investigation on each private professional conservator, private
24 professional guardian, or private professional trustee. The
25 background check shall include a record of all arrests resulting in
26 conviction and all arrests for which final disposition is pending.
27 The Department of Justice shall retain these fingerprints in its
28 files and shall provide any subsequent arrest information to the
29 clerk of the court pursuant to Section 11105.2 of the Penal Code
30 until notified by the clerk of the court that the person is no longer
31 serving in the capacity of a private professional conservator,
32 private professional guardian, or private professional trustee. The
33 superior court shall review the background fingerprint check
34 prior to the appointment of a private professional conservator,
35 private professional guardian, or private professional trustee. The
36 court shall review annual updates to the criminal background
37 check on persons currently serving in the capacity of a private
38 professional conservator, private professional guardian, or
39 private professional trustee under the court's jurisdiction. The
40 background fingerprint check may be dispensed with by the court

1 if the petitioner was appointed as a private professional
2 conservator, private professional guardian, or private
3 professional trustee, or served in the capacity of a private
4 professional conservator, private professional guardian, or
5 private professional trustee, during the previous year and a
6 background fingerprint check was previously made.

7 (d) The information required by this section shall be made
8 available to the court for any purpose, including the
9 determination of the appropriateness of appointing or continuing
10 the appointment of, or removing, the conservator or guardian or
11 trustee, but shall otherwise be kept confidential.

12 (e) This section applies to all private professional
13 conservators, private professional guardians, and private
14 professional trustees regardless of the date of appointment.

15 SEC. 6. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the
20 penalty for a crime or infraction, within the meaning of Section
21 17556 of the Government Code, or changes the definition of a
22 crime within the meaning of Section 6 of Article XIII B of the
23 California Constitution.