

AMENDED IN ASSEMBLY MAY 20, 2010
AMENDED IN ASSEMBLY JULY 1, 2009
AMENDED IN ASSEMBLY JUNE 15, 2009
AMENDED IN SENATE MAY 14, 2009
AMENDED IN SENATE MAY 5, 2009
AMENDED IN SENATE APRIL 22, 2009

SENATE BILL

No. 202

**Introduced by ~~Senators Harman, Aanestad, Cox, Ducheny, and
Wyland~~ Senator Harman**
(Coauthors: Assembly Members Adams, Gaines, Garrick, Hall, Jones,
and Silva)

February 23, 2009

~~An act to amend Section 7570 of, and to add Section 7560.5 to, the Business and Professions Code, relating to private investigators. An act to amend Sections 15408, 16061, 16061.5, 16061.7, 16061.8, 16061.9, 16064, 16336.4, and 17200 of, and to add Sections 16060.7, 16068, and 16069 to, the Probate Code, relating to probate.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 202, as amended, Harman. ~~Private investigators: continuing education. Trustees: duties.~~

(1) Existing law regulates the administration of trusts by trustees on behalf of beneficiaries. Existing law provides that, if the principal of a trust does not exceed \$20,000 in value, the trustee has the power to terminate the trust.

This bill would provide, instead, that a trustee has the power to terminate a trust if the principal does not exceed \$50,000 in value.

(2) Existing law provides that the trustee shall provide the beneficiary, upon reasonable request, information about the assets, liabilities, receipts and disbursements of the trust, acts of the trustee, and the administration of the trust relevant to the beneficiary's interest. Existing law also allows the trust instrument to waive the report, as provided.

This bill would instead provide that on reasonable written request the trustee shall report to the beneficiary information relating to the administration of the trust, and on request of the beneficiary the trustee shall provide the terms of the trust, unless it is during the period when a revocable trust can be revoked, as provided, or if the beneficiary and the trustee are the same person. This bill would allow a beneficiary or trustee to petition the court to determine the existence of a trust if a trustee has failed to report the requested information within 60 days after written request. This bill would also require a court to compel the trustee to account, regardless of waiver by a beneficiary, upon a showing that it is reasonably likely that a material breach of the trust has occurred and would provide when a waiver is void as against public policy.

(3) Existing law requires, when a revocable trust or any portion of a revocable trust becomes irrevocable, as provided, the trustee to provide a copy of the trust to any beneficiary who requests it and to any heir of a deceased settlor who requests it. Existing law also requires a trustee to serve a notification, as provided, to specified persons including each beneficiary of an irrevocable trust, each heir of the deceased settlor, and to the Attorney General if the trust is a charitable trust.

This bill would revise and recast these provisions to require the trustee to provide a true and complete copy of the terms of an irrevocable trust, or the irrevocable portion of the trust, to any beneficiary or heir of a deceased settlor who requests it, as provided, including when the power of appointment is effective or lapses upon the death of a settlor, to any beneficiary whenever there is a change of trustee of an irrevocable trust, and if the trust is a charitable trust subject to the supervision of the Attorney General, to the Attorney General, as provided. This bill would also specify that the duty to serve the notification by the trustee is the duty of the continuing or successor trustee.

Existing law also provides that a trustee who fails, except after exercising reasonable diligence, to serve the notification, as required, shall be responsible for all damages, attorney's fees, and costs.

This bill would provide that a trustee exercises reasonable diligence in ascertaining the identity and mailing address of a beneficiary or heir by giving notice by first-class mail at the last mailing address known to the trustee, if notice is not returned as undelivered within 60 days, in which case the trustee must make investigative efforts, as provided, to locate the beneficiary.

~~Existing law, the Private Investigator Act, provides for the licensure and regulation of private investigators by the Bureau of Security and Investigative Services within the Department of Consumer Affairs. Existing law requires an applicant for licensure to submit a specified application, meet certain requirements, and pay a fee not to exceed \$175. Existing law provides that a private investigator license expires 2 years following the date of issuance or on the assigned renewal date. A licensee is required to apply for a renewal and pay a renewal fee not to exceed \$125 in order to renew his or her license.~~

~~On and after January 1, 2013, this bill would require a licensee, as a condition of license renewal, to complete 12 hours of continuing education in specified subjects, and as otherwise specified for a licensee renewing a license between January 1, 2012, and January 1, 2013, or for a licensee who is a retired peace officer. The bill would require a licensee for renewal to submit to the department a signed statement attesting that he or she has completed the specified continuing education requirements, for which a false statement may be subject to a specified civil penalty as well as suspension of a license. The bill would specify that these continuing education requirements do not apply to any individual licensed as a private investigator who is 70 years of age or older and has been in good standing for at least 25 consecutive years, is an inactive licensed private investigator, as defined, or is a peace officer, as defined. The bill would authorize an inactive licensee to become active by, among other things, submitting to the department a signed statement attesting that he or she has completed the specified continuing education requirements, for which a false statement may be subject to a specified civil penalty as well as suspension of a license. The bill would specify standards to be met by continuing education providers and would require the department to convene a review panel to consult with the department in the consideration and approval of course providers and course content. The bill would require the~~

department to establish and impose a fee on course providers, in an amount that does not exceed \$20 per course to cover the department's direct costs in implementing various provisions of the bill. The bill would also increase the fee for an original license to up to \$195 and the renewal fee to up to \$145.

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

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

1 SECTION 1. Section 15408 of the Probate Code is amended
2 to read:

3 15408. (a) On petition by a trustee or beneficiary, if the court
4 determines that the fair market value of the principal of a trust has
5 become so low in relation to the cost of administration that
6 continuation of the trust under its existing terms will defeat or
7 substantially impair the accomplishment of its purposes, the court
8 may, in its discretion and in a manner that conforms as nearly as
9 possible to the intention of the settlor, order any of the following:

- 10 (1) Termination of the trust.
 - 11 (2) Modification of the trust.
 - 12 (3) Appointment of a new trustee.
- 13 (b) Notwithstanding subdivision (a), if the trust principal does
14 not exceed ~~twenty~~ fifty thousand dollars ~~(\$20,000)~~ (\$50,000) in
15 value, the trustee has the power to terminate the trust.

16 (c) The existence of a trust provision restraining transfer of the
17 beneficiary's interest does not prevent application of this section.

18 SEC. 2. Section 16060.7 is added to the Probate Code, to read:
19 16060.7. On the request of a beneficiary, the trustee shall
20 provide the terms of the trust to the beneficiary, if the trustee is
21 not required to provide the terms of the trust to the beneficiary in
22 accordance with Section 16069.

23 SEC. 3. Section 16061 of the Probate Code is amended to read:
24 16061. Except as provided in Section ~~16064~~ 16069, on
25 reasonable written request by a beneficiary, the trustee shall ~~provide~~
26 ~~report to the beneficiary with a report of~~ by providing requested
27 information ~~about the assets, liabilities, receipts, and disbursements~~
28 ~~of the trust, the acts of the trustee, and the particulars to the~~
29 ~~beneficiary~~ relating to the administration of the trust relevant to
30 the beneficiary's interest, ~~including the terms of the trust.~~

1 *SEC. 4. Section 16061.5 of the Probate Code is amended to*
2 *read:*

3 16061.5. (a) ~~When a revocable trust or any portion of a~~
4 ~~revocable trust becomes irrevocable because of the death of one~~
5 ~~or more of the settlors of the trust, or because, by the express terms~~
6 ~~of the trust, the trust becomes irrevocable within one year of the~~
7 ~~death of a settlor because of a contingency related to the death of~~
8 ~~one or more of the settlors of the trust, the trustee shall provide a~~
9 ~~true and complete copy of the terms of the irrevocable trust, or~~
10 ~~irrevocable portion of the trust, to any beneficiary of the trust who~~
11 ~~requests it and to any heir of a deceased settlor who requests it. A~~
12 ~~trustee shall provide a true and complete copy of the terms of the~~
13 ~~irrevocable trust, or irrevocable portion of the trust, to each of~~
14 ~~the following:~~

15 (1) *Any beneficiary of the trust who requests it, and to any heir*
16 *of a deceased settlor who requests it, when a revocable trust or*
17 *any portion of a revocable trust becomes irrevocable because of*
18 *the death of one or more of the settlors of the trust, when a power*
19 *of appointment is effective or lapses upon the death of a settlor*
20 *under the circumstances described in paragraph (3) of subdivision*
21 *(a) of Section 16061.7, or because, by the express terms of the*
22 *trust, the trust becomes irrevocable within one year of the death*
23 *of a settlor because of a contingency related to the death of one*
24 *or more of the settlors of the trust.*

25 (2) *Any beneficiary of the trust who requests it, whenever there*
26 *is a change of trustee of an irrevocable trust.*

27 (3) *If the trust is a charitable trust subject to the supervision of*
28 *the Attorney General, to the Attorney General, if requested, when*
29 *a revocable trust or any portion of a revocable trust becomes*
30 *irrevocable because of the death of one or more of the settlors of*
31 *the trust, when a power of appointment is effective or lapses upon*
32 *the death of a settlor under the circumstances described in*
33 *paragraph (3) of subdivision (a) of Section 16061.7, or because,*
34 *by the express terms of the trust, the trust becomes irrevocable*
35 *within one year of the death of a settlor because of a contingency*
36 *related to the death of one or more of the settlors of the trust, and*
37 *whenever there is a change of trustee of an irrevocable trust.*

38 (b) *The trustee shall, for purposes of this section, rely upon any*
39 *final judicial determination of heirship. However, the trustee shall*
40 *have discretion to make a good faith determination by any*

1 reasonable means of the heirs of a deceased settlor in the absence
2 of a final judicial determination of heirship known to the trustee.

3 *SEC. 5. Section 16061.7 of the Probate Code is amended to*
4 *read:*

5 16061.7. (a) A trustee shall serve a notification by the trustee
6 as described in this section in the following events:

7 (1) When a revocable trust or any portion thereof becomes
8 irrevocable because of the death of one or more of the settlors of
9 the trust, or because, by the express terms of the trust, the trust
10 becomes irrevocable within one year of the death of a settlor
11 because of a contingency related to the death of one or more of
12 the settlors of the trust.

13 (2) Whenever there is a change of trustee of an irrevocable trust.
14 ~~The duty to serve the notification by the trustee is the duty of the~~
15 ~~continuing or successor trustee, and any one cotrustee may serve~~
16 ~~the notification.~~

17 (3) *Whenever a power of appointment retained by a settlor is*
18 *effective or lapses upon death of the settlor with respect to an inter*
19 *vivos trust which was, or was purported to be, irrevocable upon*
20 *its creation.*

21 (4) *The duty to serve the notification by the trustee pursuant to*
22 *this subdivision is the duty of the continuing or successor trustee,*
23 *and any one cotrustee may serve the notification.*

24 (b) The notification by the trustee required by subdivision (a)
25 shall be served on each of the following:

26 (1) Each beneficiary of the irrevocable trust or irrevocable
27 portion of the trust, subject to the limitations of Section 15804.

28 (2) Each heir of the deceased settlor, if the event that requires
29 notification is the death of a settlor or irrevocability within one
30 year of the death of the settlor of the trust by the express terms of
31 the trust because of a contingency related to the death of a settlor.

32 (3) If the trust is a charitable trust subject to the supervision of
33 the Attorney General, to the Attorney General.

34 (c) A trustee shall, for purposes of this section, rely upon any
35 final judicial determination of heirship, known to the trustee, but
36 the trustee shall have discretion to make a good faith determination
37 by any reasonable means of the heirs of a deceased settlor in the
38 absence of a final judicial determination of heirship known to the
39 trustee.

1 (d) The trustee need not provide a copy of the notification by
2 trustee to any beneficiary or heir (1) known to the trustee but who
3 cannot be located by the trustee after reasonable diligence or (2)
4 unknown to the trustee.

5 (e) The notification by trustee shall be served by mail to the last
6 known address, pursuant to Section 1215, or by personal delivery.

7 (f) The notification by trustee shall be served not later than 60
8 days following the occurrence of the event requiring service of the
9 notification by trustee, or 60 days after the trustee became aware
10 of the existence of a person entitled to receive notification by
11 trustee, if that person was not known to the trustee on the
12 occurrence of the event requiring service of the notification. If
13 there is a vacancy in the office of the trustee on the date of the
14 occurrence of the event requiring service of the notification by
15 trustee, or if that event causes a vacancy, then the 60-day period
16 for service of the notification by trustee commences on the date
17 the new trustee commences to serve as trustee.

18 (g) The notification by trustee shall contain the following
19 information:

20 (1) The identity of the settlor or settlors of the trust and the date
21 of execution of the trust instrument.

22 (2) The name, mailing address and telephone number of each
23 trustee of the trust.

24 (3) The address of the physical location where the principal
25 place of administration of the trust is located, pursuant to Section
26 17002.

27 (4) Any additional information that may be expressly required
28 by the terms of the trust instrument.

29 (5) A notification that the recipient is entitled, upon reasonable
30 request to the trustee, to receive from the trustee a true and
31 complete copy of the terms of the trust.

32 (h) If the notification by the trustee is served because a revocable
33 trust or any portion of it has become irrevocable because of the
34 death of one or more settlors of the trust, or because, by the express
35 terms of the trust, the trust becomes irrevocable within one year
36 of the death of a settlor because of a contingency related to the
37 death of one or more of the settlors of the trust, the notification by
38 the trustee shall also include a warning, set out in a separate
39 paragraph in not less than 10-point boldface type, or a reasonable
40 equivalent thereof, that states as follows:

1 “You may not bring an action to contest the trust more than 120
2 days from the date this notification by the trustee is served upon
3 you or 60 days from the date on which a copy of the terms of the
4 trust is mailed or personally delivered to you during that 120-day
5 period, whichever is later.”

6 (i) Any waiver by a settlor of the requirement of serving the
7 notification by trustee required by this section is against public
8 policy and shall be void.

9 (j) A trustee may serve a notification by trustee in the form
10 required by this section on any person in addition to those on whom
11 the notification by trustee is required to be served. A trustee is not
12 liable to any person for serving or for not serving the notice on
13 any person in addition to those on whom the notice is required to
14 be served. A trustee is not required to serve a notification by trustee
15 if the event that otherwise requires service of the notification by
16 trustee occurs before January 1, 1998.

17 *SEC. 6. Section 16061.8 of the Probate Code is amended to*
18 *read:*

19 16061.8. No person upon whom the notification by the trustee
20 is served pursuant to this chapter, *whether the notice is served on*
21 *him or her within or after the time period set forth in subdivision*
22 *(f) of Section 16061.7*, may bring an action to contest the trust
23 more than 120 days from the date the notification by the trustee is
24 served upon him or her, or 60 days from the day on which a copy
25 of the terms of the trust is mailed or personally delivered to him
26 or her during that 120-day period, whichever is later.

27 *SEC. 7. Section 16061.9 of the Probate Code is amended to*
28 *read:*

29 16061.9. (a) ~~A trustee who fails to serve the notification by~~
30 ~~trustee as required by Section 16061.7 on a beneficiary shall be~~
31 ~~responsible for all damages, attorney’s fees, and costs caused by~~
32 ~~the failure unless the trustee makes a reasonably diligent effort to~~
33 ~~comply with that section. Except as provided in subdivision (b),~~
34 ~~a trustee who fails to comply with Section 16061.7 shall be~~
35 ~~responsible for all damages caused by the failure, including, but~~
36 ~~not limited to, reasonable attorney’s fees and costs incurred by or~~
37 ~~on behalf of the beneficiary or heir.~~

38 (b) ~~A trustee who fails to serve the notification by trustee as~~
39 ~~required by Section 16061.7 on an heir who is not a beneficiary~~
40 ~~and whose identity is known to the trustee shall be responsible for~~

1 ~~all damages caused to the heir by the failure unless the trustee~~
2 ~~shows that the trustee made a reasonably diligent effort to comply~~
3 ~~with that section. For purposes of this subdivision, “reasonably~~
4 ~~diligent effort” means that the trustee has sent notice by first-class~~
5 ~~mail to the heir at the heir’s last mailing address actually known~~
6 ~~to the trustee.~~

7 *(b) (1) The trustee’s exercise of reasonable diligence in*
8 *ascertaining the identity and mailing address of the beneficiary*
9 *or heir and otherwise complying with Section 16061.7 shall*
10 *constitute a complete defense to any action based on the*
11 *beneficiary’s or heir’s failure to receive the notification required*
12 *by Section 16061.7.*

13 *(2) For purposes of this subdivision, a trustee exercises*
14 *reasonable diligence in ascertaining the identity and mailing*
15 *address of a beneficiary or heir as follows:*

16 *(A) By giving notice by first-class mail to the beneficiary or heir*
17 *at the beneficiary’s or heir’s last mailing address known to the*
18 *trustee, provided the notice is not returned to the trustee as*
19 *undelivered mail within 60 days from the date the notification by*
20 *the trustee is served.*

21 *(B) If the notice described in subparagraph (A) is returned to*
22 *the trustee as undeliverable within 60 days from the date the*
23 *notification by the trustee is served, either by the trustee’s retention*
24 *of an investigative service at the expense of the trust or by the*
25 *trustee making the following efforts to locate the beneficiary:*

26 *(i) Reviewing city telephone directories, calling directory*
27 *assistance, and searching Internet telephone directories for the*
28 *last county of residence for the beneficiary or heir known to the*
29 *trustee.*

30 *(ii) Inquiring of a beneficiary’s or an heir’s relatives, friends,*
31 *acquaintances, or employers whose identity and contact*
32 *information is known to the trustee.*

33 *(iii) Mailing by first class mail of a request to the current*
34 *occupant of the beneficiary’s or heir’s last known residence for*
35 *the beneficiary’s or heir’s present address.*

36 *(c) A trustee, in exercising discretion with respect to the timing*
37 *and nature of distributions of trust assets, may consider the fact*
38 *that the period in which a beneficiary or heir could bring an action*
39 *to contest the trust has not expired.*

40 *SEC. 8. Section 16064 of the Probate Code is amended to read:*

1 16064. The trustee is not required to ~~report information or~~
 2 account to a beneficiary *as described in subdivision (a) of Section*
 3 *16062*, in any of the following circumstances:

4 (a) To the extent the trust instrument waives the ~~report or~~
 5 account, except that no waiver described in subdivision (e) of
 6 Section 16062 shall be valid or enforceable. Regardless of a waiver
 7 of accounting in the trust instrument, upon a showing that it is
 8 reasonably likely that a material breach of the trust has occurred,
 9 the court may compel the trustee to ~~report information about the~~
 10 ~~trust and to~~ account.

11 (b) ~~In the case of a beneficiary of a revocable trust, as provided~~
 12 ~~in Section 15800, for the period when the trust may be revoked.~~

13 (e)

14 (b) As to a beneficiary who has waived in writing the right to
 15 ~~a report or an~~ account. A waiver of rights under this subdivision
 16 may be withdrawn in writing at any time as to ~~the most recent~~
 17 ~~account and future~~ accounts *for transactions occurring after the*
 18 *date of the written withdrawal. A waiver has no effect on the*
 19 ~~beneficiary's right to petition for a report or account pursuant to~~
 20 ~~Section 17200. Regardless of a waiver of accounting by a~~
 21 ~~beneficiary, upon a showing that is reasonably likely that a~~
 22 ~~material breach of the trust has occurred, the court may compel~~
 23 ~~the trustee to account.~~

24 (c) *In any of the circumstances set forth in Section 16069.*

25 (d) ~~Where the beneficiary and the trustee are the same person.~~

26 *SEC. 9. Section 16068 is added to the Probate Code, to read:*
 27 *16068. Any waiver by a settlor of the obligation of the trustee*
 28 *of either of the following is against public policy and shall be void:*

29 (a) *To provide the terms of the trust to the beneficiary as*
 30 *required by Sections 16060.7 and 16061.5.*

31 (b) *To provide requested information to the beneficiary as*
 32 *required by Section 16061.*

33 *SEC. 10. Section 16069 is added to the Probate Code, to read:*

34 *16069. The trustee is not required to account to the beneficiary,*
 35 *provide the terms of the trust to a beneficiary, or provide requested*
 36 *information to the beneficiary pursuant to Section 16061, in any*
 37 *of the following circumstances:*

38 (a) *In the case of a beneficiary of a revocable trust, as provided*
 39 *in Section 15800, for the period when the trust may be revoked.*

40 (b) *If the beneficiary and the trustee are the same person.*

1 *SEC. 11. Section 16336.4 of the Probate Code is amended to*
2 *read:*

3 16336.4. (a) Unless expressly prohibited by the governing
4 instrument, a trustee may convert a trust into a unitrust, as
5 described in this section. A trust that limits the power of the trustee
6 to make an adjustment between principal and income or modify
7 the trust does not affect the application of this section unless it is
8 clear from the governing instrument that it is intended to deny the
9 trustee the power to convert into a unitrust.

10 (b) The trustee may convert a trust into a unitrust without a court
11 order if all of the following apply:

12 (1) The conditions set forth in subdivision (a) of Section 16336
13 are satisfied.

14 (2) The unitrust proposed by the trustee conforms to the
15 provisions of paragraphs (1) to (8), inclusive, of subdivision (e).

16 (3) The trustee gives written notice of the trustee's intention to
17 convert the trust into a unitrust and furnishes the information
18 required by subdivision (c). The notice shall comply with the
19 requirements of Chapter 5 (commencing with Section 16500),
20 including notice to a beneficiary who is a minor and to the minor's
21 guardian, if any.

22 (4) No beneficiary objects to the proposed action in a writing
23 delivered to the trustee within the period prescribed by subdivision
24 (d) of Section 16502 or a longer period as is specified in the notice
25 described in subdivision (c).

26 (c) The notice described in paragraph (3) of subdivision (b)
27 shall include a copy of Sections 16336.4 to 16336.7, inclusive,
28 and all of the following additional information:

29 (1) A statement that the trust shall be administered in accordance
30 with the provisions of subdivision (e) and the effective date of the
31 conversion.

32 (2) A description of the method to be used for determining the
33 fair market value of trust assets.

34 (3) The amount actually distributed to the income beneficiary
35 during the previous accounting year of the trust.

36 (4) The amount that would have been distributed to the income
37 beneficiary during the previous accounting year of the trust had
38 the trustee's proposed changes been in effect during that entire
39 year.

1 (5) The discretionary decisions the trustee proposes to make
2 as of the conversion date pursuant to subdivision (f).

3 (d) In deciding whether to exercise the power conferred by this
4 section, a trustee may consider, among other things, the factors
5 set forth in subdivision (g) of Section 16336.

6 (e) Except to the extent that the court orders otherwise or the
7 parties agree otherwise pursuant to Section 16336.5 after a trust
8 is converted to a unitrust, all of the following shall apply:

9 (1) The trustee shall make regular distributions in accordance
10 with the governing instrument construed in accordance with the
11 provisions of this section.

12 (2) The term “income” in the governing instrument shall mean
13 an annual distribution, the unitrust amount, equal to 4 percent,
14 which is the payout percentage, of the net fair market value of the
15 trust’s assets, whether those assets would be considered income
16 or principal under other provisions of this chapter, averaged over
17 the lesser of *the following*: ~~(A) the three preceding years, or (B)~~
18 ~~the period during which the trust has been in existence.~~

19 (A) *The three preceding years.*

20 (B) *The period during which the trust has been in existence.*

21 (3) During each accounting year of the trust following its
22 conversion into a unitrust, the trustee shall, as early in the year as
23 is practicable, furnish each income beneficiary with a statement
24 describing the computation of the unitrust amount for that
25 accounting year.

26 (4) The trustee shall determine the net fair market value of each
27 asset held in the trust no less often than annually. However, the
28 following property shall not be included in determining the unitrust
29 amount:

30 (A) Any residential property or any tangible personal property
31 that, as of the first business day of the current accounting year,
32 one or more current beneficiaries of the trust have or have had the
33 right to occupy, or have or have had the right to possess or control,
34 other than in his or her capacity as trustee of the trust, which
35 property shall be administered according to other provisions of
36 this chapter as though no conversion to a unitrust had occurred.

37 (B) Any asset specifically devised to a beneficiary to the extent
38 necessary, in the trustee’s reasonable judgment, to avoid a material
39 risk of exhausting other trust assets prior to termination of the trust.
40 All net income generated by a specifically devised asset excluded

1 from the unitrust computation pursuant to this subdivision shall
2 be accumulated or distributed by the trustee according to the rules
3 otherwise applicable to that net income pursuant to other provisions
4 of this chapter.

5 (C) Any asset while held in a testator's estate or a terminating
6 trust.

7 (5) The unitrust amount, as otherwise computed pursuant to this
8 subdivision, shall be reduced proportionately for any material
9 distribution made to accomplish a partial termination of the trust
10 required by the governing instrument or made as a result of the
11 exercise of a power of appointment or withdrawal, other than
12 distributions of the unitrust amount, and shall be increased
13 proportionately for the receipt of any material addition to the trust,
14 other than a receipt that represents a return on investment, during
15 the period considered in paragraph (2) in computing the unitrust
16 amount. For the purpose of this paragraph, a distribution or an
17 addition shall be "material" if the net value of the distribution or
18 addition, when combined with all prior distributions made or
19 additions received during the same accounting year, exceeds 10
20 percent of the value of the assets used to compute the unitrust
21 amount as of the most recent prior valuation date. The trustee may,
22 in the reasonable exercise of his or her discretion, adjust the unitrust
23 amount pursuant to this subdivision even if the distributions or
24 additions are not sufficient to meet the definition of materiality set
25 forth in the preceding sentence.

26 (6) In the case of a short year in which a beneficiary's right to
27 payments commences or ceases, the trustee shall prorate the
28 unitrust amount on a daily basis.

29 (7) Unless otherwise provided by the governing instrument or
30 determined by the trustee, the unitrust amount shall be considered
31 paid in the following order from the following sources:

32 (A) From the net taxable income, *other than capital gains*,
33 determined as if the trust were other than a unitrust.

34 (B) From net realized short-term capital gains.

35 (C) From net realized long-term capital gains.

36 (D) From tax-exempt and other income.

37 (E) From principal of the trust.

38 (8) Expenses that would be deducted from income if the trust
39 were not a unitrust may not be deducted from the unitrust amount.

1 (f) The trustee shall determine, in the trustee's discretion, all of
2 the following matters relating to administration of a unitrust created
3 pursuant to this section:

4 (1) The effective date of a conversion to a unitrust.

5 (2) The frequency of payments in satisfaction of the unitrust
6 amount.

7 (3) Whether to value the trust's assets annually or more
8 frequently.

9 (4) What valuation dates to use.

10 (5) How to value nonliquid assets.

11 (6) The characterization of the unitrust payout for income tax
12 reporting purposes. However, the trustee's characterization shall
13 be consistent.

14 (7) Any other matters that the trustee deems appropriate for the
15 proper functioning of the unitrust.

16 (g) A conversion into a unitrust does not affect a provision in
17 the governing instrument directing or authorizing the trustee to
18 distribute principal or authorizing the exercise of a power of
19 appointment over or withdrawal of all or a portion of the principal.

20 (h) A trustee may not convert a trust into a unitrust in any of
21 the following circumstances:

22 (1) If payment of the unitrust amount would change the amount
23 payable to a beneficiary as a fixed annuity or a fixed fraction of
24 the value of the trust assets.

25 (2) If the unitrust distribution would be made from any amount
26 that is permanently set aside for charitable purposes under the
27 governing instrument and for which a federal estate or gift tax
28 deduction has been taken, unless both income and principal are
29 set aside.

30 (3) If possessing or exercising the power to convert would cause
31 an individual to be treated as the owner of all or part of the trust
32 for federal income tax purposes, and the individual would not be
33 treated as the owner if the trustee did not possess the power to
34 convert.

35 (4) If possessing or exercising the power to convert would cause
36 all or part of the trust assets to be subject to federal estate or gift
37 tax with respect to an individual, and the assets would not be
38 subject to federal estate or gift tax with respect to the individual
39 if the trustee did not possess the power to convert.

1 (5) If the conversion would result in the disallowance of a
2 federal estate tax or gift tax marital deduction that would be
3 allowed if the trustee did not have the power to convert.

4 (i) If paragraph (3) or (4) of subdivision (h) applies to a trustee
5 and there is more than one trustee, a cotrustee to whom the
6 provision does not apply may convert the trust unless the exercise
7 of the power by the remaining trustee or trustees is prohibited by
8 the governing instrument. If paragraph (3) or (4) of subdivision
9 (h) applies to all of the trustees, the court may order the conversion
10 as provided in subdivision (b) of Section 16336.5.

11 (j) (1) A trustee may release the power conferred by this section
12 to convert to a unitrust if ~~(1) the trustee is uncertain about whether~~
13 ~~possessing or exercising the power will cause a result described~~
14 ~~in paragraph (3), (4), or (5) of subdivision (h), or (2) the trustee~~
15 ~~determines that possessing or exercising the power will or may~~
16 ~~deprive the trust of a tax benefit or impose a tax burden not~~
17 ~~described in subdivision (h). The release may be permanent or for~~
18 ~~a specified period, including a period measured by the life of an~~
19 ~~individual.~~ *either of the following circumstances exist:*

20 (A) *The trustee is uncertain about whether possessing or*
21 *experiencing the power will cause a result described in paragraph*
22 *(3), (4), or (5) of subdivision (h).*

23 (B) *The trustee determines that possessing or exercising the*
24 *power will or may deprive the trust of a tax benefit or impose a*
25 *tax burden not described in subdivision (h).*

26 (2) *A release pursuant to paragraph (1) may be permanent or*
27 *for a specified period, including a period measured by the life of*
28 *an individual.*

29 *SEC. 12. Section 17200 of the Probate Code is amended to*
30 *read:*

31 17200. (a) Except as provided in Section 15800, a trustee or
32 beneficiary of a trust may petition the court under this chapter
33 concerning the internal affairs of the trust or to determine the
34 existence of the trust.

35 (b) Proceedings concerning the internal affairs of a trust include,
36 but are not limited to, proceedings for any of the following
37 purposes:

38 (1) Determining questions of construction of a trust instrument.

39 (2) Determining the existence or nonexistence of any immunity,
40 power, privilege, duty, or right.

- 1 (3) Determining the validity of a trust provision.
- 2 (4) Ascertaining beneficiaries and determining to whom property
- 3 shall pass or be delivered upon final or partial termination of the
- 4 trust, to the extent the determination is not made by the trust
- 5 instrument.
- 6 (5) Settling the accounts and passing upon the acts of the trustee,
- 7 including the exercise of discretionary powers.
- 8 (6) Instructing the trustee.
- 9 (7) Compelling the trustee to ~~report information about the trust~~
- 10 ~~or account to the beneficiary, if (A) the trustee has failed to submit~~
- 11 ~~a requested report or account within 60 days after written request~~
- 12 ~~of the beneficiary and (B) no report or account has been made~~
- 13 ~~within six months preceding the request. do any of the following:~~
- 14 (A) *Provide a copy of the terms of the trust.*
- 15 (B) *Report information about the trust under Section 16061 if*
- 16 *the trustee has failed to report the requested information within*
- 17 *60 days after written request of the beneficiary, and the beneficiary*
- 18 *has not received the requested information from the trustee within*
- 19 *the six months preceding the request.*
- 20 (C) *Account to the beneficiary, subject to the provisions of*
- 21 *Section 16064, if the trustee has failed to submit a requested*
- 22 *account within 60 days after written request of the beneficiary and*
- 23 *no report or account has been made within six months preceding*
- 24 *the request.*
- 25 (8) Granting powers to the trustee.
- 26 (9) Fixing or allowing payment of the trustee's compensation
- 27 or reviewing the reasonableness of the trustee's compensation.
- 28 (10) Appointing or removing a trustee.
- 29 (11) Accepting the resignation of a trustee.
- 30 (12) Compelling redress of a breach of the trust by any available
- 31 remedy.
- 32 (13) Approving or directing the modification or termination of
- 33 the trust.
- 34 (14) Approving or directing the combination or division of
- 35 trusts.
- 36 (15) Amending or conforming the trust instrument in the manner
- 37 required to qualify a decedent's estate for the charitable estate tax
- 38 deduction under federal law, including the addition of mandatory
- 39 governing instrument requirements for a charitable remainder trust

1 as required by final regulations and rulings of the United States
2 Internal Revenue Service.

3 (16) Authorizing or directing transfer of a trust or trust property
4 to or from another jurisdiction.

5 (17) Directing transfer of a testamentary trust subject to
6 continuing court jurisdiction from one county to another.

7 (18) Approving removal of a testamentary trust from continuing
8 court jurisdiction.

9 (19) Reforming or excusing compliance with the governing
10 instrument of an organization pursuant to Section 16105.

11 (20) Determining the liability of the trust for any debts of a
12 deceased settlor. However, nothing in this paragraph shall provide
13 standing to bring an action concerning the internal affairs of the
14 trust to a person whose only claim to the assets of the decedent is
15 as a creditor.

16 (21) Determining petitions filed pursuant to Section 15687 and
17 reviewing the reasonableness of compensation for legal services
18 authorized under that section. In determining the reasonableness
19 of compensation under this paragraph, the court may consider,
20 together with all other relevant circumstances, whether prior
21 approval was obtained pursuant to Section 15687.

22 (22) If a member of the State Bar of California has transferred
23 the economic interest of his or her practice to a trustee and if the
24 member is a deceased member under Section 9764, a petition may
25 be brought to appoint a practice administrator. The procedures,
26 including, but not limited to, notice requirements, that apply to the
27 appointment of a practice administrator for a deceased member
28 shall apply to the petition brought under this section.

29 (23) If a member of the State Bar of California has transferred
30 the economic interest of his or her practice to a trustee and if the
31 member is a disabled member under Section 2468, a petition may
32 be brought to appoint a practice administrator. The procedures,
33 including, but not limited to, notice requirements, that apply to the
34 appointment of a practice administrator for a disabled member
35 shall apply to the petition brought under this section.

36 ~~(e) The court may, on its own motion, set and give notice of an~~
37 ~~order to show cause why a trustee should not be removed for failing~~
38 ~~to register in the Statewide Registry under Section 2850.~~

39 ~~SECTION 1. Section 7560.5 is added to the Business and~~
40 ~~Professions Code, to read:~~

1 ~~7560.5. (a) (1) On and after January 1, 2013, any individual~~
2 ~~licensed as a private investigator shall complete 12 hours of~~
3 ~~continuing education, as approved by the department, in order to~~
4 ~~renew his or her license, and of these, two hours shall be on the~~
5 ~~subject of privacy rights, two hours shall be on the subject of~~
6 ~~professional ethics, two hours shall be on the subject of recent~~
7 ~~legal developments relating to private investigators, and six hours~~
8 ~~shall be on any subject relating to private investigators.~~

9 ~~(2) An individual licensed as a private investigator whose license~~
10 ~~is subject to renewal between January 1, 2012, and January 1,~~
11 ~~2013, shall complete six hours of continuing education, as approved~~
12 ~~by the department, in order to renew his or her license, and of~~
13 ~~these, two hours shall be on the subject of privacy rights, two hours~~
14 ~~shall be on the subject of professional ethics, and two hours shall~~
15 ~~be on the subject of recent legal developments relating to private~~
16 ~~investigators.~~

17 ~~(3) (A) Paragraphs (1) and (2) shall not apply to any individual~~
18 ~~licensed as a private investigator who is a retired peace officer as~~
19 ~~defined in Chapter 4.5 (commencing with Section 830) of Title 3~~
20 ~~of Part 2 of the Penal Code who has been retired for less than one~~
21 ~~year.~~

22 ~~(B) Notwithstanding paragraphs (1) and (2), on and after January~~
23 ~~1, 2012, any individual licensed as a private investigator who is a~~
24 ~~retired peace officer as defined in Chapter 4.5 (commencing with~~
25 ~~Section 830) of Title 3 of Part 2 of the Penal Code who has been~~
26 ~~retired for more than one year and not more than two years shall~~
27 ~~complete six hours of continuing education, as approved by the~~
28 ~~department, in order to renew his or her license, and of these, two~~
29 ~~hours shall be on the subject of privacy rights, two hours shall be~~
30 ~~on the subject of professional ethics, and two hours shall be on the~~
31 ~~subject of recent legal developments relating to private~~
32 ~~investigators.~~

33 ~~(b) A licensee shall submit to the department a signed statement~~
34 ~~attesting that he or she has completed the continuing education~~
35 ~~requirement in subdivision (a). This statement shall be submitted~~
36 ~~with the license renewal application.~~

37 ~~(c) A licensee shall maintain, for a period of five years, copies~~
38 ~~of certificates of continuing education completion demonstrating~~
39 ~~compliance with the continuing education requirement in~~
40 ~~subdivision (a).~~

1 ~~(d) The department may suspend for a period not to exceed 60~~
2 ~~days, the license of any licensee who is found not to be in~~
3 ~~compliance with subdivision (a), (b), or (c), at which time the~~
4 ~~department shall revoke the license unless the required continuing~~
5 ~~education has been completed and documented.~~

6 ~~(e) The department shall have the right to audit the records of~~
7 ~~any licensee to verify completion of the continuing education~~
8 ~~requirement.~~

9 ~~(f) This section shall not apply to any individual licensed as a~~
10 ~~private investigator who meets any of the following requirements:~~

11 ~~(1) Is 70 years of age or older and has been a licensee in good~~
12 ~~standing for a minimum of 25 consecutive years.~~

13 ~~(2) Is an inactive licensed private investigator.~~

14 ~~(3) Is a peace officer as defined in Chapter 4.5 (commencing~~
15 ~~with Section 830) of Title 3 of Part 2 of the Penal Code.~~

16 ~~(A) For the purposes of this subdivision, “inactive licensed~~
17 ~~private investigator” shall mean an individual who meets all of the~~
18 ~~following requirements:~~

19 ~~(i) Is licensed under this chapter.~~

20 ~~(ii) Has informed the department that he or she will not be~~
21 ~~performing activities that require licensure.~~

22 ~~(iii) Does not perform activities requiring licensure.~~

23 ~~(B) A licensee who is inactive under this paragraph may become~~
24 ~~active upon submission to the department of a signed statement~~
25 ~~attesting that he or she has completed the continuing education~~
26 ~~requirement in subdivision (a), and upon payment to the department~~
27 ~~of the renewal fee, as specified in Section 7570.~~

28 ~~(g) (1) Continuing education providers (CEPs) shall obtain~~
29 ~~approval from the department prior to offering a course for~~
30 ~~continuing education to licensed private investigators.~~

31 ~~(A) CEPs shall submit to the department a course description,~~
32 ~~certificate, and curriculum vitae of course instructors for review~~
33 ~~and approval.~~

34 ~~(B) CEPs shall maintain a record of course sign-in forms,~~
35 ~~sign-out forms, student enrollment, copies of certificates of~~
36 ~~completion, and course outlines for a period of five years.~~

37 ~~(C) CEPs shall agree to audits performed by the department.~~

38 ~~(D) The director may revoke or deny the right of a CEP to offer~~
39 ~~continuing education for failure to comply with any of the~~
40 ~~requirements of this subdivision.~~

1 ~~(2) Notwithstanding paragraph (1):~~
2 ~~(A) CEPs that have been approved by, and are in good standing~~
3 ~~with, the State Bar to provide mandatory continuing legal education~~
4 ~~may offer courses for continuing education to licensed private~~
5 ~~investigators without approval from the department.~~
6 ~~(B) CEPs that have been approved by, and are in good standing~~
7 ~~with, the Commission on Peace Officer Standards and Training~~
8 ~~may offer courses that have been approved by the commission to~~
9 ~~licensed private investigators for continuing education without~~
10 ~~approval from the department.~~
11 ~~(h) (1) The department shall establish a procedure for approving~~
12 ~~CEPs to offer continuing education to licensed private~~
13 ~~investigators.~~
14 ~~(2) The department shall convene a review panel to consult with~~
15 ~~the department in the consideration and approval of CEPs and~~
16 ~~course content. The review panel shall include licensed private~~
17 ~~investigators, representatives of CEPs, and professional~~
18 ~~associations of licensed private investigators. Accredited academic~~
19 ~~institutions and recognized national and state associations of~~
20 ~~licensed private investigators may be approved by the department~~
21 ~~as CEPs.~~
22 ~~(3) The department shall develop criteria for course providers~~
23 ~~and course content that, to the extent applicable and feasible, is~~
24 ~~consistent with the provisions of Section 166.~~
25 ~~(4) The department shall establish and charge a fee, not to~~
26 ~~exceed twenty dollars (\$20) per course, to be paid by CEPs to~~
27 ~~cover the department's direct costs in implementing the provisions~~
28 ~~of this section that require the department to approve CEPs and~~
29 ~~course content, to perform audits, as described in subdivision (g),~~
30 ~~and to develop criteria for course providers and course content, as~~
31 ~~described in subdivision (h).~~
32 ~~(i) If, in a signed statement required by subdivision (b) or (f),~~
33 ~~a declarant willfully states as true any material fact he or she knows~~
34 ~~to be false, that person shall be subject to a civil penalty of up to~~
35 ~~ten thousand dollars (\$10,000). In addition, the department may~~
36 ~~suspend the license of a licensee for a period not to exceed one~~
37 ~~year, at which time the department shall revoke the license unless~~
38 ~~the licensee submits a signed statement attesting that he or she has~~
39 ~~completed the continuing education requirement in subdivision~~
40 ~~(a). Any public prosecutor may bring a civil action to impose the~~

1 civil penalty. A licensee shall be advised of the penalty authorized
2 under this subdivision in the documents submitted for signature.

3 ~~SEC. 2. Section 7570 of the Business and Professions Code is~~
4 ~~amended to read:~~

5 ~~7570. The fees prescribed by this chapter are as follows:~~

6 ~~(a) The application and examination fee for an original license~~
7 ~~may not exceed fifty dollars (\$50).~~

8 ~~(b) The application fee for an original branch office certificate~~
9 ~~may not exceed thirty dollars (\$30).~~

10 ~~(c) The fee for an original license for a private investigator may~~
11 ~~not exceed one hundred ninety-five dollars (\$195).~~

12 ~~(d) The renewal fee is as follows:~~

13 ~~(1) For a license as a private investigator, the fee may not exceed~~
14 ~~one hundred forty-five dollars (\$145).~~

15 ~~(2) For a combination license as a private investigator and~~
16 ~~private patrol operator under Chapter 11.5 (commencing with~~
17 ~~Section 7580), AC or DC prefix, the fee may not exceed six~~
18 ~~hundred dollars (\$600).~~

19 ~~(3) For a branch office certificate for a private investigator, the~~
20 ~~fee may not exceed thirty dollars (\$30), and for a combination~~
21 ~~private investigator and private patrol operator under Chapter 11.5~~
22 ~~(commencing with Section 7580), the fee may not exceed forty~~
23 ~~dollars (\$40).~~

24 ~~(e) The delinquency fee is 50 percent of the renewal fee in effect~~
25 ~~on the date of expiration.~~

26 ~~(f) A reinstatement fee is equal to the amount of the renewal~~
27 ~~fee plus the regular delinquency fee.~~

28 ~~(g) The fee for reexamination of an applicant or his or her~~
29 ~~manager may not exceed fifteen dollars (\$15).~~