

**ASSEMBLY BILL**

**No. 997**

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**Introduced by Assembly Member Wagner**

February 18, 2011

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An act to amend Section 6501 of the Business and Professions Code, relating to professional fiduciaries.

LEGISLATIVE COUNSEL'S DIGEST

AB 997, as introduced, Wagner. Professional fiduciaries.

Existing law, the Professional Fiduciaries Act, provides for the licensure and regulation of professional fiduciaries by the Professional Fiduciaries Bureau within the Department of Consumer Affairs. Existing law defines the term “professional fiduciary” and specifies those entities excluded from that term.

This bill would additionally provide that any specified nonprofit corporation or charitable trust acting as a trustee incidental to the purposes for which it was organized as a trust and meeting certain requirements is not a professional fiduciary subject to the act.

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

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

1        SECTION 1. Section 6501 of the Business and Professions  
2        Code is amended to read:  
3            6501. As used in this chapter, the following terms have the  
4        following meanings:  
5            (a) “Act” means this chapter.

1       (b) “Bureau” means the Professional Fiduciaries Bureau within  
2 the Department of Consumer Affairs, established pursuant to  
3 Section 6510.

4       (c) “Client” means an individual who is served by a professional  
5 fiduciary.

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

7       (e) “Licensee” means a person who is licensed under this chapter  
8 as a professional fiduciary.

9       (f) (1) “Professional fiduciary” means a person who acts as a  
10 conservator of the person, the estate, or person and estate, or  
11 guardian of the estate, or person and estate, for two or more  
12 individuals at the same time who are not related to the professional  
13 fiduciary or to each other.

14       (2) “Professional fiduciary” also means a person who acts as a  
15 trustee, agent under a durable power of attorney for health care,  
16 or agent under a durable power of attorney for finances, for more  
17 than three individuals, at the same time.

18       In counting individuals under this paragraph to determine  
19 whether a person is a professional fiduciary:

20       (A) Individuals who are related to the fiduciary shall not be  
21 counted.

22       (B) All individuals who are related to each other shall be counted  
23 as one individual.

24       (C) All trustors who are related to each other shall be counted  
25 as one individual, and neither the number of trusts nor the number  
26 of beneficiaries of those trusts shall be counted.

27       (3) For purposes of this subdivision, “related” means related by  
28 blood, adoption, marriage, or registered domestic partnership.

29       (4) “Professional fiduciary” does not include any of the  
30 following:

31       (A) A trust company, as defined in Section 83 of the Probate  
32 Code.

33       (B) An FDIC-insured institution, or its holding companies,  
34 subsidiaries, or affiliates. For the purposes of this subparagraph,  
35 “affiliate” means any entity that shares an ownership interest with,  
36 or that is under the common control of, the FDIC-insured  
37 institution.

38       (C) Any public agency, including the public guardian, public  
39 conservator, or other agency of the State of California or of a  
40 county of California or any regional center for persons with

1 developmental disabilities as defined in Section 4620 of the  
2 Welfare and Institutions Code.

3     (D) Any nonprofit corporation or charitable trust that is  
4 described in Section 501(c)(3) of the Internal Revenue Code acting  
5 as a trustee incidental to the purposes for which it was organized  
6 as a trust and that meets at least one of the following conditions:

7         (i) It is a trust from which annual distributions are limited to a  
8 sum certain or a fixed percentage of the net fair market value of  
9 the trust assets as described in Section 664(d) of the Internal  
10 Revenue Code governing charitable remainder trusts.

11         (ii) It is a trust from which annual distributions are limited to  
12 a guaranteed annuity or a fixed percentage of the fair market value  
13 of the property as described in Section 2522(c)(2)(B) or Section  
14 2055(e)(2)(B) of the Internal Revenue Code governing charitable  
15 lead trusts.

16         (iii) It is a trust from which annual distributions are limited to  
17 income, including a pooled income fund from which annual  
18 distributions are limited to income as described in Section  
19 642(c)(5) of the Internal Revenue Code governing pooled income  
20 funds.

21         (iv) It is a trust that was created prior to January 1, 1970.

22     (♦)

23     (E) A person employed by an entity or agency described in  
24 subparagraph (A), (B), or (C), or (D) who is acting within the  
25 course and scope of that employment, and a public officer of an  
26 agency described in subparagraph (C) acting in the course and  
27 scope of official duties.

28     (E)

29     (F) Any person whose sole activity as a professional fiduciary  
30 is as a broker-dealer, broker-dealer agent, investment adviser, or  
31 investment adviser representative registered and regulated under  
32 the Corporate Securities Law of 1968 (Division 1 (commencing  
33 with Section 25000) of Title 4 of the Corporations Code), the  
34 Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.),  
35 or the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et  
36 seq.), or involves serving as a trustee to a company regulated by  
37 the Securities and Exchange Commission under the Investment  
38 Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

1       (g) “Committee” means the Professional Fiduciaries Advisory  
2   Committee, as established pursuant to Section 6511.