

AMENDED IN ASSEMBLY APRIL 11, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 997

Introduced by Assembly Member Wagner

February 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 997, as amended, 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 *a* specified nonprofit ~~corporations~~ *corporation* or charitable ~~trusts~~ *trust* meeting certain requirements ~~are~~ *is not a* professional ~~fiduciaries~~ *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:

1 6501. As used in this chapter, the following terms have the
2 following meanings:

- 3 (a) “Act” means this chapter.
- 4 (b) “Bureau” means the Professional Fiduciaries Bureau within
5 the Department of Consumer Affairs, established pursuant to
6 Section 6510.
- 7 (c) “Client” means an individual who is served by a professional
8 fiduciary.
- 9 (d) “Department” means the Department of Consumer Affairs.
- 10 (e) “Licensee” means a person who is licensed under this chapter
11 as a professional fiduciary.
- 12 (f) (1) “Professional fiduciary” means a person who acts as a
13 conservator of the person, the estate, or person and estate, or
14 guardian of the estate, or person and estate, for two or more
15 individuals at the same time who are not related to the professional
16 fiduciary or to each other.
- 17 (2) “Professional fiduciary” also means a person who acts as a
18 trustee, agent under a durable power of attorney for health care,
19 or agent under a durable power of attorney for finances, for more
20 than three individuals, at the same time.
- 21 In counting individuals under this paragraph to determine
22 whether a person is a professional fiduciary:
 - 23 (A) Individuals who are related to the fiduciary shall not be
24 counted.
 - 25 (B) All individuals who are related to each other shall be counted
26 as one individual.
 - 27 (C) All trustors who are related to each other shall be counted
28 as one individual, and neither the number of trusts nor the number
29 of beneficiaries of those trusts shall be counted.
- 30 (3) For purposes of this subdivision, “related” means related by
31 blood, adoption, marriage, or registered domestic partnership.
- 32 (4) “Professional fiduciary” does not include any of the
33 following:
 - 34 (A) A trust company, as defined in Section 83 of the Probate
35 Code.
 - 36 (B) An FDIC-insured institution, or its holding companies,
37 subsidiaries, or affiliates. For the purposes of this subparagraph,
38 “affiliate” means any entity that shares an ownership interest with,
39 or that is under the common control of, the FDIC-insured
40 institution.

1 (C) Any public agency, including the public guardian, public
2 conservator, or other agency of the State of California or of a
3 county of California or any regional center for persons with
4 developmental disabilities as defined in Section 4620 of the
5 Welfare and Institutions Code.

6 (D) Any nonprofit corporation or charitable trust that is
7 described in Section 501(c)(3) of the Internal Revenue Code and
8 that satisfies all of the following requirements:

9 (i) Is an organization described in Section 509(a)(1), Section
10 509(a)(2), or Section 509(a)(3) of the Internal Revenue Code.

11 (ii) Has been in existence for at least five years.

12 (iii) Has total institutional funds as described in subdivision (e)
13 of Section 18502 of the Probate Code according to its most recent
14 audited financial statement with a value of at least two million
15 dollars (\$2,000,000) net of encumbrances.

16 (iv) Is acting as a trustee, incidental to the purposes for which
17 it was organized ~~as a trust and~~, *of a trust that* meets at least one of
18 the following conditions:

19 (I) It is a trust from which annual distributions are limited to
20 *income*, a sum certain, or a fixed percentage of the net fair market
21 value of the trust assets as described in Section 664(d) of the
22 Internal Revenue Code governing charitable remainder trusts.

23 (II) It is a trust from which annual distributions are limited to
24 a guaranteed annuity or a fixed percentage of the fair market value
25 of the property as described in Section 2522(c)(2)(B) or Section
26 2055(e)(2)(B) of the Internal Revenue Code.

27 (III) It is a trust from which annual distributions are limited to
28 income, including a pooled income fund from which annual
29 distributions are limited to income as described in Section 642(c)(5)
30 of the Internal Revenue Code governing pooled income funds.

31 (IV) It is a trust as to which the value of the charitable interest
32 was presently ascertainable upon creation of the trust and
33 deductible for federal gift, estate, or income tax purposes under
34 the Internal Revenue Code as in effect prior to enactment of the
35 federal Tax Reform Act of 1969 (Public Law 91-172).

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

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

5 (ii) ~~It is a trust from which annual distributions are limited to a~~
6 ~~guaranteed annuity or a fixed percentage of the fair market value~~
7 ~~of the property as described in Section 2522(c)(2)(B) or Section~~
8 ~~2055(e)(2)(B) of the Internal Revenue Code governing charitable~~
9 ~~lead trusts.~~

10 (iii) ~~It is a trust from which annual distributions are limited to~~
11 ~~income, including a pooled income fund from which annual~~
12 ~~distributions are limited to income as described in Section 642(c)(5)~~
13 ~~of the Internal Revenue Code governing pooled income funds.~~

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

15 ~~(F)~~

16 (E) A person employed by *or acting as an agent on behalf of*
17 *an entity or agency described in subparagraph (A), (B), (C), or*
18 *(D), or (E) who is acting within the course and scope of that*
19 *employment or agency, and a public officer of an agency described*
20 *in subparagraph (C) acting in the course and scope of official*
21 *duties.*

22 ~~(G)~~

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

33 (g) "Committee" means the Professional Fiduciaries Advisory
34 Committee, as established pursuant to Section 6511.

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