

## Assembly Bill No. 997

### CHAPTER 323

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

[Approved by Governor September 26, 2011. Filed with  
Secretary of State September 26, 2011.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 997, 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 corporation or charitable trust meeting certain requirements is not a professional fiduciary subject to the act.

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

SECTION 1. Section 6501 of the Business and Professions Code is amended to read:

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

- (a) "Act" means this chapter.
- (b) "Bureau" means the Professional Fiduciaries Bureau within the Department of Consumer Affairs, established pursuant to Section 6510.
- (c) "Client" means an individual who is served by a professional fiduciary.
- (d) "Department" means the Department of Consumer Affairs.
- (e) "Licensee" means a person who is licensed under this chapter as a professional fiduciary.
- (f) (1) "Professional fiduciary" means a person who acts as a conservator of the person, the estate, or person and estate, or guardian of the estate, or person and estate, for two or more individuals at the same time who are not related to the professional fiduciary or to each other.
- (2) "Professional fiduciary" also means a person who acts as a trustee, agent under a durable power of attorney for health care, or agent under a durable power of attorney for finances, for more than three individuals, at the same time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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