

## Senate Bill No. 1090

### CHAPTER 424

An act to amend Sections 2340, 2341, and 2342 of, and to add Section 15604 to, the Probate Code, relating to trusts.

[Approved by Governor September 16, 1999. Filed  
with Secretary of State September 16, 1999.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1090, Schiff. Trusts: charitable corporations: private professional trustees.

(1) Existing law provides that a nonprofit charitable corporation may be appointed as a guardian or conservator of a person or estate.

This bill would specify that a nonprofit charitable corporation may also be appointed as a trustee of a trust.

(2) Existing law prohibits the court from appointing a private professional conservator or private professional guardian unless specified information is filed with the county clerk under penalty of perjury.

This bill would prohibit the court from appointing a private professional trustee, as defined, unless specified information is filed with the county clerk under penalty of perjury. By extending the class of persons required to file statements under penalty of perjury, this bill would impose a state-mandated local program.

(3) 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.

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

SECTION 1. Section 15604 is added to the Probate Code, to read:

15604. (a) Notwithstanding any other provision of law, a nonprofit charitable corporation may be appointed as trustee of a trust created pursuant to this division, if all of the following conditions are met:

(1) The corporation is incorporated in this state.

(2) The articles of incorporation specifically authorize the corporation to accept appointments as trustee.

(3) For the three years prior to the filing of a petition under this section, the nonprofit charitable corporation has been exempt from payment of income taxes pursuant to Section 501(c)(3) of the



Internal Revenue Code and has served as a private professional conservator in the state.

(4) The settlor or an existing trustee consents to the appointment of the nonprofit corporation as trustee or successor trustee, either in the petition or in a writing signed either before or after the petition is filed.

(5) The court determines the trust to be in the best interest of the settlor.

(6) The court determines that the appointment of the nonprofit corporation as trustee is in the best interest of the settlor and the trust estate.

(b) A petition for appointment of a nonprofit corporation as trustee under this section may be filed by any of the following:

(1) The settlor or the spouse of the settlor.

(2) The nonprofit charitable corporation.

(3) An existing trustee.

(c) The petition shall include in the caption the name of a responsible corporate officer who shall act for the corporation for purposes of this section. If, for any reason, the officer so named ceases to act as the responsible corporate officer for purposes of this section, the corporation shall file with the court a notice containing (1) the name of the successor responsible corporate officer and (2) the date the successor becomes the responsible corporate officer.

(d) The petition shall request that a trustee be appointed for the estate, shall specify the name, address, and telephone number of the proposed trustee and the name, address, and telephone number of the settlor or proposed settlor, and state the reasons why the appointment of the trustee is necessary.

(e) The petition shall set forth, so far as the information is known to the petitioner, the names and addresses of all persons entitled to notice of a conservatorship petition, as specified in subdivision (b) of Section 1821.

(f) Notice of the hearing on the petition shall be given in the same manner as provided in Sections 1822 and 1824.

(g) The trustee appointed by the court pursuant to this section shall do all of the following:

(1) File the required bond for the benefit of the trust estate in the same manner provided for conservators of the estate as set forth in Section 2320. This bond may not be waived, but the court may, in its discretion, permit the filing of a bond in an amount less than would otherwise be required under Section 2320.

(2) Comply with the requirements for registration and filing of annual statements pursuant to Article 4 (commencing with Section 2340) of Chapter 4 of Part 4 of Division 4.

(3) File with the court inventories and appraisals of the trust estate and present its accounts of the trust estate in the manner



provided for conservators of the estate set forth in Chapter 7 (commencing with Section 2600) of Part 4 of Division 4.

(4) Be reimbursed for expenses and compensated as trustee in the manner provided for conservators of the estate as described in Chapter 8 (commencing with Section 2640) of Part 4 of Division 4. However, compensation as trustee appointed under this section shall be allowed only for services actually rendered and shall not be based on the value of the estate.

(5) Be represented by counsel in all proceedings before the court. Any fee allowed for an attorney for the nonprofit charitable corporation shall be for services actually rendered and shall not be based on the value of the estate.

(h) The trustee appointed by the court under this section may be removed by the court, or may resign in accordance with Chapter 9 (commencing with Section 2650) of Part 4 of Division 4. If the nonprofit charitable corporation resigns or is removed by the court, the settlor may appoint another person as successor trustee, or another nonprofit charitable corporation as trustee under this section.

(i) The trustee appointed by the court under this section is bound by the trust instrument created by the settlor, and shall be subject to the duties and responsibilities of a trustee as provided in this code.

SEC. 2. Section 2340 of the Probate Code is amended to read:

2340. (a) No superior court may appoint a private professional conservator or private professional guardian, or permit any person to continue to serve as a private professional conservator or private professional guardian, pursuant to Chapter 5 (commencing with Section 2350) or Chapter 6 (commencing with Section 2400) unless the conservator or guardian has filed the information required by Sections 2342 and 2343 with the county clerk in each county where a petition for appointment has been filed.

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

SEC. 3. Section 2341 of the Probate Code is amended to read:

2341. (a) As used in this article, “private professional conservator” means a person or entity appointed as conservator of the person or estate, or both, of two or more conservatees at the same time who are not related to the conservator by blood or marriage, except a bank or other entity authorized to conduct the business of a trust company, or any public officer or public agency including the public guardian, public conservator, or other agency of the State of California. In the case of an entity, all natural persons who are authorized by the entity to perform the functions of a conservator shall comply with this article. The court may, at its discretion, require any person who is the conservator for only one conservatee not



related to the conservator by blood or marriage to comply with this article, and in that case, references in this article to a “private professional conservator” includes those persons.

(b) As used in this article, “private professional guardian” means a person or entity appointed as guardian of the person or estate, or both, of two or more wards at the same time who are not related to the guardian by blood or marriage, except a bank or other entity authorized to conduct the business of a trust company, or any public officer or public agency including the public guardian, public conservator, or other agency of the State of California. In the case of an entity, all natural persons who are authorized by the entity to perform the functions of a guardian shall comply with this article. The court may, at its discretion, require any person who is the guardian for only one ward not related to the guardian by blood or marriage to comply with this article, and in that case, references in this article to a “private professional guardian” includes those persons.

(c) As used in this article, “private professional trustee” means a nonprofit charitable corporation appointed as trustee pursuant to Section 15604.

SEC. 4. Section 2342 of the Probate Code is amended to read:

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

(1) His or her educational background and professional experience.

(2) At least three professional references.

(3) The names of the conservator’s or guardian’s current conservatees or the trusts currently administered by the trustee.

(4) The aggregate dollar value of all assets currently under the conservator’s, guardian’s, or trustee’s supervision.

(5) The conservator’s, guardian’s, or trustee’s addresses and telephone numbers for his or her place of business and place of residence.

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

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

(b) Upon filing of a petition for appointment, a private professional conservator, private professional guardian, and private professional trustee shall state that he or she is a private professional



conservator or private professional guardian or private professional trustee, and that the information required by this section is on file with the county clerk.

(c) The county clerk shall order a background fingerprint check from the Department of Justice and may request a background fingerprint check from the Federal Bureau of Investigation on each private professional conservator, private professional guardian, or private professional trustee. The background check shall include a record of all arrests resulting in conviction and all arrests for which final disposition is pending. The Department of Justice shall retain these fingerprints in its files and shall provide any subsequent arrest information to the county clerk pursuant to Section 11105.2 of the Penal Code until notified by the county clerk that the person is no longer serving in the capacity of a private professional conservator, private professional guardian, or private professional trustee. The superior court shall review the background fingerprint check prior to the appointment of a private professional conservator, private professional guardian, or private professional trustee. The court shall review annual updates to the criminal background check on persons currently serving in the capacity of a private professional conservator, private professional guardian, or private professional trustee under the court's jurisdiction. The background fingerprint check may be dispensed with by the court if the petitioner was appointed as a private professional conservator, private professional guardian, or private professional trustee, or served in the capacity of a private professional conservator, private professional guardian, or private professional trustee, during the previous year and a background fingerprint check was previously made.

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

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

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

