

AMENDED IN SENATE APRIL 13, 2000

**SENATE BILL**

**No. 1881**

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**Introduced by Senator O'Connell**  
(Coauthor: Assembly Member Corbett)

February 24, 2000

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An act to add Chapter 6 (commencing with Section 6500) to Division 3 of the Business and Professions Code, relating to professional fiduciaries.

LEGISLATIVE COUNSEL'S DIGEST

SB 1881, as amended, O'Connell. Professional Fiduciaries Act.

Existing law provides for the regulation and licensing of various professions and vocations, but does not provide for the regulation and licensing of professional fiduciaries.

This bill would enact the Professional Fiduciaries Act, and would provide for *the* licensing and regulation of professional fiduciaries, as defined, by the Department of—~~Justice~~ *Consumer Affairs* in conjunction with a licensing board appointed by the department with a specified membership. The licensing board would have certain duties and responsibilities in this regard, and would also be required to establish licensing fees, administer licensing examinations, and draft a code of ethics. This bill would provide for the deposit of the licensing fees in the Professional Fiduciaries Fund, which the bill would create. This bill would enact other related provisions.

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. The Legislature finds and declares as  
2 follows:

3 (a) California has the fastest growing population in the  
4 country, and the rate of increase in the number of people  
5 of age 65 or older is surpassing that in other states. The  
6 number of people of age 65 or older will grow from 3.7  
7 million people in the year 2000, to 6.3 million in the year  
8 2020. The fastest growing segment of California's  
9 population, expected to increase by 148 percent between  
10 the years 1990 and 2020, is people of age 85 or older.

11 (b) As the population of California continues to grow  
12 and age, an increasing number of persons in the state are  
13 unable to provide properly for their personal needs, to  
14 manage their financial resources, or to resist fraud or  
15 undue influence. In addition, there is an increasing use of  
16 trusts and durable powers of attorney by individuals  
17 seeking to provide for potential incapacity.

18 (c) One result of these trends is the growing number  
19 of persons acting as conservators, trustees, attorneys in  
20 fact, and estate administrators on behalf of other persons  
21 or their estates. The persons acting in one or more of these  
22 capacities are known as professional fiduciaries.

23 (d) Professional fiduciaries are not adequately  
24 regulated at present. This lack of regulation can result in  
25 the neglect, or the physical or financial abuse, of the  
26 clients professional fiduciaries are supposed to serve.

27 (e) Creation of a program to license professional  
28 fiduciaries is necessary to protect the public health,  
29 safety, and welfare.

30 SEC. 2. Chapter 6 (commencing with Section 6500)  
31 is added to Division 3 of the Business and Professions  
32 Code, to read:

33

34 CHAPTER 6. PROFESSIONAL FIDUCIARIES

35

36 6500. This chapter shall be known and may be cited  
37 as the Professional Fiduciaries Act.



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

3 (a) “Board” means the licensing board established by  
4 the Department of ~~Justice~~ *Consumer Affairs* pursuant to  
5 Section 6504.

6 (b) “Client” means the individual served by a  
7 professional fiduciary.

8 (c) “Department” means the Department of ~~Justice~~  
9 *Consumer Affairs*.

10 (d) “Professional fiduciary” means a person who, for  
11 compensation, acts as a conservator, guardian, trustee,  
12 personal representative, agent under a durable power of  
13 attorney for health care, or agent under a durable power  
14 of attorney for finances, for two or more persons not  
15 related to the professional fiduciary or each other by  
16 blood, adoption, or marriage. Professional fiduciary also  
17 means a person, employed by a public agency or financial  
18 institution, acting as a conservator, guardian, trustee,  
19 personal representative, or agent under a durable power  
20 of attorney, who makes substantive fiduciary decisions or  
21 supervises persons who make substantive fiduciary  
22 decisions.

23 6502. A person applying for licensure as a professional  
24 fiduciary shall meet all of the following requirements:

25 (a) Be at least 21 years of age.

26 (b) Be a United States citizen.

27 (c) Have no felony convictions.

28 (d) Have submitted a rolled fingerprint card for state  
29 and Federal Bureau of Investigation criminal history  
30 background checks.

31 (e) Have completed the mandatory 12 hours of  
32 prelicensing training.

33 (f) Have passed the licensing examination.

34 (g) Have one of the following:

35 (1) A bachelor of arts or bachelor of science degree  
36 from an accredited college or university.

37 (2) An associate of arts degree from an accredited  
38 community college and at least five years of experience  
39 with substantive fiduciary responsibilities for a  
40 professional fiduciary, public agency, or financial



1 institution acting as a conservator, guardian, trustee,  
2 personal representative, or agent under a power of  
3 attorney.

4 (3) Registration with the Statewide Registry pursuant  
5 to Sections 2850 to 2856, inclusive, of the Probate Code,  
6 prior to January 1, 2001.

7 (4) Experience of not less than three years, prior to  
8 January 1, 2001, with substantive fiduciary responsibilities  
9 for a public agency or financial institution acting as a  
10 conservator, guardian, trustee, personal representative,  
11 or agent under a power of attorney.

12 (h) Have agreed to adhere to the Professional  
13 Fiduciaries' Code of Ethics.

14 (i) Have submitted an application for licensure.

15 (j) Have paid a nonrefundable application fee in an  
16 amount determined by the board.

17 6503. No person shall act as a professional fiduciary  
18 unless that person is licensed as a professional fiduciary in  
19 accordance with the provisions of this chapter. A court  
20 shall not appoint a professional fiduciary to serve unless  
21 that professional fiduciary is licensed. A court shall not  
22 appoint a public agency or financial institution to act as  
23 a conservator, guardian, trustee, personal representative,  
24 or agent under a durable power of attorney, unless the  
25 public agency or financial institution certifies that it has  
26 at least one professional fiduciary on its staff, and that all  
27 persons who meet the definition of a professional  
28 fiduciary in subdivision (d) of Section 6501 are licensed.

29 6504. The department shall establish a licensing board  
30 whose membership shall be comprised of 11 members  
31 selected by the department. The department's selections  
32 shall include six professional fiduciaries, including three  
33 from the public sector (at least two of whom shall be  
34 members of the California State Association of Public  
35 Administrators, Public Guardians, and Public  
36 Conservators), and three from the private sector (at least  
37 two of whom shall be members of the Professional  
38 Fiduciary Association of California). The remaining  
39 members shall include a department employee, an  
40 employee of the Judicial Council of California, a court



1 investigator, a representative of the California Bankers  
2 Association, and a member of the State Bar of California  
3 who is certified as a specialist in probate, estate planning,  
4 and trust law.

5 6505. (a) Except as otherwise specified in Section  
6 6508, the board shall be responsible for administering the  
7 licensing program established in this chapter.

8 (b) The board shall meet at least quarterly to vote to  
9 approve or deny licensure to those applicants  
10 recommended to the board by the department. If the  
11 board approves the application for licensure, it shall  
12 notify the department, which shall notify the applicant  
13 and forward the applicant's name as a licensee to the  
14 statewide registry. The department shall provide the  
15 licensee with a certificate identifying him or her as a  
16 "licensed professional fiduciary." If the board denies the  
17 application for licensure, it shall notify the department,  
18 which shall give the applicant notice of the denial and the  
19 right to appeal that denial to the board.

20 (c) The board shall approve classes qualifying for the  
21 12 hours of prelicense training, as well as classes qualifying  
22 for the annual continuing education requirement  
23 established by this chapter.

24 (d) The board shall maintain a current list of all  
25 approved classes.

26 (e) The board shall arrange for the preparation and  
27 administration of licensing examinations.

28 (f) The board shall establish a complaint committee,  
29 comprised of three of its members, which shall receive  
30 complaints regarding the actions of a professional  
31 fiduciary. The complaint committee shall review a  
32 professional fiduciary's alleged violation of statute or the  
33 Professional Fiduciary's Code of Ethics, and any other  
34 complaint referred to it by the department, and shall  
35 impose sanctions upon a finding of a violation or a breach  
36 of fiduciary duty. Sanctions shall include any of the  
37 following:

- 38 (1) Censure, either private or public.
- 39 (2) Suspension of the professional fiduciary's license.
- 40 (3) Revocation of the professional fiduciary's license.



1 (g) If the complaint committee imposes sanctions, it  
2 shall notify the licensee in writing of the imposition of the  
3 sanctions, and of the licensee's right to appeal the  
4 imposition of sanctions within 60 days of the receipt of the  
5 notice of the imposition of sanctions. The complaint  
6 committee shall notify the statewide registry of any  
7 sanctions imposed.

8 (h) The board shall set the fees to be paid for the  
9 licensing application and examination, as well as the fee  
10 to be paid for license renewal.

11 6506. Board members shall be volunteers and shall  
12 not be compensated for serving, but shall be reimbursed  
13 for expenses incurred in the performance of their duties.  
14 Fees collected for the license applications and renewals,  
15 as well as the licensing examination, shall be deposited in  
16 the Professional Fiduciary Fund in the State Treasury,  
17 which is hereby created. The money in the fund, upon  
18 appropriation, shall be used to defray board expenses.

19 6507. Board members shall be immune from liability  
20 for any act taken pursuant to this chapter, provided that  
21 they have acted in good faith.

22 6508. The department shall review all applications for  
23 licensure and refer those recommended for approval to  
24 the board. The department shall not recommend  
25 approval for any applicant who is any of the following:

26 (a) Has not met the qualifications for licensure under  
27 this chapter.

28 (b) Has been convicted of any crime related to the  
29 functions and duties of a fiduciary.

30 (c) Engages in fraud or deceit in applying for licensure  
31 under this chapter.

32 (d) Has been found to have engaged in dishonesty,  
33 fraud, or gross negligence in performing the functions or  
34 duties of a professional fiduciary prior to the effective  
35 date of this chapter.

36 (e) Has been removed as a fiduciary by a court for  
37 breach of fiduciary duty prior to the effective date of this  
38 chapter, and all appeals have been taken, or the time to  
39 file an appeal has expired.



1 6509. (a) To qualify for licensure, applicants shall  
2 have completed 12 hours of prelicensing education  
3 provided by a board-approved educational program.

4 (b) To remain licensed, a licensee shall complete 12  
5 hours of approved continuing education courses each  
6 year, and shall pay the annual renewal fee set by the  
7 board. Completion of 12 hours of approved continuing  
8 education courses shall not be required in the year in  
9 which the professional fiduciary is initially licensed.

10 (c) The cost of any educational program mandated by  
11 this chapter shall not be borne by any client served by a  
12 professional fiduciary.

13 6510. As a requirement for licensure, applicants shall  
14 take and pass the licensing examination administered by  
15 the board. The board shall determine the cost of the  
16 examination, and the frequency with which it shall be  
17 administered.

18 6511. An applicant notified of the denial of his or her  
19 application for licensure shall have the right to appeal to  
20 the board. The appeal shall be filed within 60 days of the  
21 date of the notice of denial.

22 6512. A person who has been notified of the approval  
23 of his or her application for licensure may identify himself  
24 or herself as a “licensed professional fiduciary.”

25 6513. Individuals, entities, agencies, and associations  
26 that propose to offer educational programs qualifying for  
27 the prelicensing educational or continuing educational  
28 requirements of this chapter shall apply for, and obtain  
29 approval by the board.

30 6514. (a) Licenses shall expire on December 31 of  
31 each year, except in the year a person is initially licensed,  
32 in which case the license expires on December 31 of the  
33 following year.

34 (b) A license may be renewed upon proof of the  
35 licensee’s compliance with the continuing education  
36 requirements of this chapter, and payment of the renewal  
37 fee set by the board, provided that the licensee has not  
38 engaged in conduct that would justify the board’s refusal  
39 to grant the renewal. Acts justifying the board’s refusal to  
40 renew a license shall include any of the following:



1 (1) Conviction of any crime related to the  
2 qualifications, functions, and duties of a professional  
3 fiduciary.

4 (2) Fraud or deceit in obtaining a license under this  
5 chapter.

6 (3) Dishonesty, fraud, or gross negligence of the  
7 professional fiduciary in performing the functions or  
8 duties of a professional fiduciary.

9 (4) Removal by a court for breach of fiduciary duty, if  
10 all appeals have been taken, or the time to file an appeal  
11 has expired.

12 6515. The department shall perform an initial review  
13 of a complaint, and shall do one of the following:

14 (a) Determine that the complaint is not adequately  
15 documented, in which case, it shall return the complaint  
16 to the complainant with direction to provide further  
17 documentation.

18 (b) Determine that the complaint appears to be  
19 frivolous, in which case, it shall forward the complaint to  
20 the complaint committee with the recommendation that  
21 the complaint be dismissed as frivolous.

22 (c) Determine that the complaint relates to a specific  
23 case, and is either currently under review by the court,  
24 or has not yet been presented to a court for resolution, in  
25 which case the complaint shall be returned to the  
26 complainant for initial resolution by the court.

27 (d) If the department, after investigation, determines  
28 that the complaint appears to be meritorious, it shall  
29 notify the complaint committee in writing of the  
30 complaint and shall recommend disciplinary action. The  
31 complaint committee shall notify the professional  
32 fiduciary in writing of the complaint, and shall request a  
33 response with supporting documentation by a specified  
34 date.

35 6516. The board shall draft the Professional  
36 Fiduciaries' Code of Ethics. Copies of the Professional  
37 Fiduciaries' Code of Ethics shall be provided to persons  
38 who request an application for licensure. The board may  
39 amend the Professional Fiduciaries' Code of Ethics from  
40 time to time, as it deems necessary, provided that no



1 amendment shall be effective until the next annual  
2 renewal of a professional fiduciary's license. Any  
3 amendment to the Professional Fiduciaries' Code of  
4 Ethics shall be included in the license renewal materials  
5 sent the licensee.

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