

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1226

Introduced by Senator Gaines

February 23, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1226, as amended, Gaines. Professional fiduciaries.

Existing law, the Professional Fiduciaries Act, provides for the licensure and regulation of professional fiduciaries, ~~as defined~~, by the Professional Fiduciaries Bureau within the Department of Consumer Affairs, ~~and defines various terms for its purposes~~. *The act defines a "professional fiduciary" to include a person who, among other things, acts as a trustee, agent under a durable power of attorney for health care, or an agent under a durable power of attorney for finances, for more than 3 individuals, at the same time.*

~~This bill would make technical, nonsubstantive changes to the definitions provisions.~~ *revise that definition to include a person who acts in those capacities pursuant to a nondurable power of attorney, unless the power of attorney is for a single act or between partners or coowners.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-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, *unless the power of*
21 *attorney is for a single act or between partners or coowners.*

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

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

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

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

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

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

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

37 (B) An institution insured by the Federal Deposit Insurance
38 Corporation (FDIC), or its holding companies, subsidiaries, or
39 affiliates. For the purposes of this subparagraph, “affiliate” means

1 any entity that shares an ownership interest with, or that is under
2 the common control of, the FDIC-insured institution.

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

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

11 (i) Is an organization described in Section 509(a)(1), Section
12 509(a)(2), or Section 509(a)(3) of the Internal Revenue Code.

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

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

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

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

25 (II) It is a trust from which annual distributions are limited to
26 a guaranteed annuity or a fixed percentage of the fair market value
27 of the property as described in Section 2055(e)(2)(B) or Section
28 2522(c)(2)(B) of the Internal Revenue Code.

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

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

38 (E) A person employed by or acting as an agent on behalf of an
39 entity or agency described in subparagraph (A), (B), (C), or (D)
40 who is acting within the course and scope of that employment or

1 agency, and a public officer of an agency described in subparagraph
2 (C) acting in the course and scope of official duties.

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

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