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AB-3144 Professional Fiduciaries Bureau. (2017-2018)

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Date Published: 09/24/2018 09:00 PM

Assembly Bill No. 3144

CHAPTER 681

An act to amend Sections 6501, 6510, 6533, 6534, and 6561 of, and to add Section 6581 to, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 22, 2018. Filed with Secretary of State September 22, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3144, Low. Professional Fiduciaries Bureau.

Existing law, until January 1, 2019, establishes the Professional Fiduciaries Bureau within the Department of Consumer Affairs, and requires the bureau to license and regulate professional fiduciaries. Existing law prescribes specified qualifications, including education and work experience, for licensure as a professional fiduciary. Existing law requires the licensee to initially, and annually thereafter, file with the bureau a statement under penalty of perjury as to whether, among other things, he or she has been removed for cause as a conservator, guardian, trustee, or personal representative. Existing law requires the bureau to maintain specified information in the licensee's file, including whether the licensee has ever been removed for cause or resigned as a conservator, guardian, trustee, or personal representative and requires the bureau to make this information available to a court for any purpose. Existing law requires the bureau to investigate the actions of a professional fiduciary upon receipt of a complaint from any person.

This bill would extend the operation of the bureau to January 1, 2023. The bill would expand the work experience requirements to qualify for licensure as a professional fiduciary and would require a licensee to additionally include in his or her statement, filed under penalty of perjury, whether he or she has been removed for cause as an agent under a durable power of attorney for health care or as an agent under a durable power of attorney for finances. By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

This bill would also require the bureau to maintain in the licensee's file, among other things, the licensee's current principals under a durable power of attorney for healthcare or finances and whether the licensee has ever been removed for cause or resigned, as provided, as an agent under a durable power of attorney for health care or as an agent under a durable power of attorney for finances. The bill would prohibit a licensee, as specified, from billing a client, or imposing a fee on the estate or trust of a client, for responding to a complaint filed with the bureau against the licensee.

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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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 either of the following:
 - (A) A person who acts as a guardian or conservator of the person, the estate, or the person and estate, for two or more individuals at the same time who are not related to the professional fiduciary or to each other.
 - (B) A personal representative of a decedent's estate, as defined in Section 58 of the Probate Code, 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.

SEC. 2. Section 6510 of the Business and Professions Code is amended to read:

6510. (a) There is within the jurisdiction of the department the Professional Fiduciaries Bureau. The bureau is under the supervision and control of the director. The duty of enforcing and administering this chapter is vested in the chief of the bureau, who is responsible to the director. Every power granted or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy director or by the chief, subject to conditions and limitations as the director may prescribe.

(b) The Governor shall appoint, subject to confirmation by the Senate, the chief of the bureau, at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.

(c) (1) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

(2) Notwithstanding any other provision of law, the repeal of this section renders the bureau subject to review by the appropriate policy committees of the Legislature.

(3) Notwithstanding any other law, upon the repeal of this section, the responsibilities and jurisdiction of the bureau shall be transferred to the Professional Fiduciaries Advisory Committee, as provided by Section 6511.

SEC. 3. Section 6533 of the Business and Professions Code is amended to read:

6533. In order to meet the qualifications for licensure as a professional fiduciary a person shall meet all of the following requirements:

(a) Be at least 21 years of age.

(b) Have not committed any acts that are grounds for denial of a license under Section 480 or 6536.

(c) Submit fingerprint images as specified in Section 6533.5 in order to obtain criminal offender record information.

(d) Have completed the required prelicensing education described in Section 6538.

(e) Have passed the licensing examination administered by the bureau pursuant to Section 6539.

(f) Have at least one of the following:

(1) A baccalaureate degree of arts or sciences from a college or university accredited by a nationally recognized accrediting body of colleges and universities or a higher level of education.

(2) An associate of arts or sciences degree from a college or university accredited by a nationally recognized accrediting body of colleges and universities, and at least three years of experience with either of the following substantive fiduciary responsibilities:

(A) Serving as a conservator of a person, estate, or person and estate, a guardian of an estate or person and estate, a trustee, an agent under a durable power of attorney for health care, or an agent under a durable power of attorney for finances.

(B) Working for a professional fiduciary, a public agency, or a financial institution acting as a conservator of a person, estate, or person and estate, a guardian of an estate or person and estate, a trustee, an agent under a durable power of attorney for health care, or an agent under a durable power of attorney for finances.

(3) At least five years of experience with either of the following substantive fiduciary responsibilities:

(A) Serving as a conservator of a person, estate, or person and estate, a guardian of an estate or person and estate, a trustee, an agent under a durable power of attorney for health care, or an agent under a durable power of attorney for finances.

(B) Working for a professional fiduciary, a public agency, or a financial institution acting as a conservator of a person, estate, or person and estate, a guardian of an estate or person and estate, a trustee, an agent under a durable power of attorney for health care, or an agent under a durable power of attorney for finances.

(g) Agree to adhere to the Professional Fiduciaries Code of Ethics and to all statutes and regulations.

(h) Consent to the bureau conducting a credit check on the applicant.

(i) File a completed application for licensure with the bureau on a form provided by the bureau and signed by the applicant under penalty of perjury.

(j) Submit with the license application a nonrefundable application fee, as specified in this chapter.

SEC. 4. Section 6534 of the Business and Professions Code is amended to read:

6534. (a) The bureau shall maintain the following information in each licensee's file, shall make this information available to a court for any purpose, including the determination of the appropriateness of appointing or continuing the appointment of, or removing, the licensee as a conservator, guardian, trustee, personal representative, agent under a durable power of attorney for health care, or agent under a durable power of attorney for finances, and shall otherwise keep this information confidential, except as provided in subdivisions (b) and (c) of this section:

(1) The names of the licensee's current conservatees, wards, principals under a durable power of attorney for health care, or principals under a durable power of attorney for finances, and the names of the trusts or estates currently administered by the licensee.

(2) The aggregate dollar value of all assets currently under the licensee's supervision as a professional fiduciary.

(3) The licensee's current addresses and telephone numbers for his or her place of business and place of residence.

(4) Whether the licensee has ever been removed for cause as a conservator, guardian, trustee, personal representative, agent under a durable power of attorney for health care, or agent under a durable power of attorney for finances, or has ever resigned as a conservator, guardian, trustee, personal representative, agent under a durable power of attorney for health care, or agent under a durable power of attorney for finances, in a specific case, the circumstances causing that removal or resignation, and the case names, court locations, and case numbers associated with the removal or resignation.

(5) The case names, court locations, and case numbers of all conservatorship, guardianship, or trust or other estate administration cases that are closed for which the licensee served as the conservator, guardian, trustee, or personal representative.

(6) Information regarding any discipline imposed upon the licensee by the bureau.

(7) Whether the licensee has filed for bankruptcy or held a controlling financial interest in a business that filed for bankruptcy in the last 10 years.

(b) The bureau shall make the information in paragraphs (2), (4), (6), and (7) of subdivision (a) available to the public.

(c) The bureau shall also publish information regarding licensees on the Internet as specified in Section 27. The information shall include, but shall not be limited to, information regarding license status and the information specified under subdivision (b).

SEC. 5. Section 6561 of the Business and Professions Code is amended to read:

6561. (a) A licensee shall initially, and annually thereafter, file with the bureau a statement under penalty of perjury containing the following:

- (1) Her or his business address, telephone number, and facsimile number.
- (2) Whether or not he or she has been removed for cause as a conservator, guardian, trustee, personal representative, agent under a durable power of attorney for health care, or agent under a durable power of attorney for finances. The licensee may file an additional statement of the issues and facts pertaining to the case.
- (3) The case names, court locations, and case numbers for all matters where the licensee has been appointed by the court.
- (4) Whether he or she has been found by a court to have breached a fiduciary duty.
- (5) Whether he or she has resigned or settled a matter in which a complaint has been filed, along with the case number and a statement of the issues and facts pertaining to the allegations.
- (6) Any licenses or professional certificates held by the licensee.
- (7) Any ownership or beneficial interests in any businesses or other enterprises held by the licensee or by a family member that receives or has received payments from a client of the licensee.
- (8) Whether the licensee has filed for bankruptcy or held a controlling financial interest in a business that filed for bankruptcy in the last ten years.
- (9) The name of any persons or entities that have an interest in the licensee's professional fiduciary business.
- (10) Whether the licensee has been convicted of a crime.

(b) The statement by the licensee required by this section may be filed electronically with the bureau, in a form approved by the bureau. However, any additional statement filed under paragraph (2) of subdivision (a) shall be filed in writing.

SEC. 6. Section 6581 is added to the Business and Professions Code, to read:

6581. A licensee, or an agent working on behalf of a licensee, including an attorney, shall not bill a client or impose a fee on the estate or trust of a client for responding to a complaint filed with the bureau against the licensee.

SEC. 7. 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.