

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2148 (Low)
Version: June 25, 2024
Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

Professional fiduciaries

DIGEST

This bill authorizes the formation of a professional fiduciary corporation, if certain conditions are met, and requires a professional fiduciary corporation to be registered by the Professional Fiduciary Bureau. The bill prohibits a superior court from appointing a professional fiduciary as a guardian, conservator, personal representative, trustee, or other officer, or allow a professional fiduciary to continue in any of those offices, unless the professional fiduciary is licensed as a professional fiduciary, registered as a professional fiduciary corporation, or otherwise exempt from licensure.

EXECUTIVE SUMMARY

A professional fiduciary may be appointed by a court as a guardian or conservator of a person or an estate, or both, or to probate a person's estate. A fiduciary may also be appointed by an individual as the trustee of a trust or an agent under a power of attorney. A professional fiduciary has significant responsibility for managing the assets or person of another and as such is required to be licensed by the Professional Fiduciary Bureau. This bill seeks to address a purported gap in existing law by requiring a professional fiduciary corporation to be registered with the Professional Fiduciary Bureau and ensuring that a court cannot name a professional fiduciary as a guardian, conservator, personal representative, trustee, or other officer unless they are licensed or registered, except as specified. This bill passed the Senate Business, Professions and Economic Development Committee on a vote of 11 to 0. This bill is sponsored by the Professional Fiduciary Association of California. No timely opposition was received by this Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides for the licensure and regulation of professional fiduciaries by the Professional Fiduciaries Bureau (PFB) under the Professional Fiduciaries Act. (Bus. & Prof. Code § 6500 et. seq.)
- 2) Prohibits a person from acting or holding themselves out to the public as a professional fiduciary unless licensed as a professional fiduciary, except as specified. (Bus. & Prof. Code § 6530.)
- 3) Defines a “professional fiduciary” as 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. (Bus. & Prof. Code §6501(f)(1)(A).)
 - b) A personal representative of a decedent’s estate, as defined in the Probate Code, for two or more individuals at the same time who are not related to the professional fiduciary or to each other. (Bus. & Prof. Code §6501(f)(1)(B); Prob. Code § 58(a).)
 - c) 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. (Corp. Code § 6501(f)(2).)
- 4) Authorizes the formation of professional corporations under the Moscone-Knox Professional Corporation Act. (Corp. Code § 13400 et. seq.)
 - a) Defines “professional services” as any type of professional services that may be lawfully rendered pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act. (Corp. Code § 13401(a).)
 - b) Defines “professional corporation” as a corporation that is engaged in rendering professional services in a single profession pursuant to a certificate of registration issued by the governmental agency regulating the profession as provided in the Moscone-Knox Professional Corporation Act and that in its practice or business designates itself as a professional or other corporation as may be required by statute. (Corp. Code § 13401(b).)
- 5) Prohibits a superior court from appointing a person to carry out the duties of a professional fiduciary, or permit a person to continue those duties, unless the person holds a valid, unexpired, unsuspended license as a professional fiduciary, is exempt from the definition of “professional fiduciary,” or is exempt from the licensing requirements of the Professional Fiduciaries Act. (Prob. Code § 2340.)

This bill:

- 1) Prohibits a professional corporation from acting as, or holding itself out to the public as, a professional fiduciary unless the professional corporation is registered with the PFB.
- 2) Requires the PFB to issue a certificate of registration to a professional corporation if the professional corporation files with the PFB all of the following under penalty of perjury:
 - a) a copy of the professional corporation's articles of incorporation;
 - b) proof that the professional corporation is an active professional corporation;
 - c) proof that the professional corporation is in good standing; and
 - d) proof that all directors, officers, and shareholders of the professional corporation are licensed under the Professional Fiduciaries Act.
- 3) Requires a registered professional fiduciary corporation to comply with both of the following after receiving a certificate of registration:
 - a) annually file with the PFB, under penalty of perjury, all of the initial registration information in 2), above; and
 - b) prohibits the income of a registered professional fiduciary corporation attributable to professional services rendered while a shareholder is a disqualified person from accruing to the benefit of that shareholder or their shares in the professional corporation.
- 4) Subjects a professional corporation's certificate of registration to the disciplinary action as a licensee under the Professional Fiduciaries Act.
- 5) Specifies that the fee to obtain and annually renew a certificate of registration must be set by the PFB in an amount necessary to recover the reasonable costs to the PFB in carrying out those functions.
- 6) Makes the above provisions operative on and after July 1, 2025.
- 7) Updates the definition of "professional fiduciary" in the Probate Code to include a professional corporation that is a registrant of the PFB.
- 8) Prohibits a superior court from appointing a professional fiduciary as a guardian, conservator, personal representative, trustee, or other officer, or allow a professional fiduciary to continue in any of those offices, unless the professional fiduciary satisfies any of the following:
 - a) holds a current, unsuspended license as a professional fiduciary;
 - b) is exempt from the licensing requirements for professional fiduciaries; or
 - c) holds a current, unsuspended certificate of registration under the Professional Fiduciaries Act.

- 9) Makes other technical and conforming changes.

COMMENTS

1. Stated need for the bill

The author writes:

AB 2148 protects vulnerable California's, including seniors, children, and persons with disabilities by ensuring that anyone acting in the capacity of a fiduciary, register and be subject to regulation and enforcement by the Professional Fiduciaries Bureau.

2. Background on professional fiduciaries

A professional fiduciary is defined as any person who acts as a guardian, conservator, or personal representative for two or more individuals at the same time who are not related to the professional fiduciary or each other, a trustee, an agent under a durable power of attorney for health care, or an agent under a durable power of attorney for finances for more than three individuals, at the same time. (Bus. & Prof. Code § 6501 (f).) A professional fiduciary is required to be licensed and regulated by the PFB. Often, a professional fiduciary steps in to act when family members are unable or unwilling to serve, or when there is a dispute among the family members. Professional fiduciaries must make a broad range of complex decisions for wards and conservatees, including where they live, home care arrangements, major medical decisions, and control of all of the financial matters from bank accounts to investment and tax decisions. A personal representative is generally appointed in connection with the administration of estates, a trustee in connection with administration of a trust, and an agent under a durable power of attorney to handle financial matters. These positions place responsibility on a person for making decisions relating to the management and disposition of assets, management of accounts, and the distribution to heirs or beneficiaries. Agents for health care of financial matters may be called upon to make critical medical decisions on behalf of the principal.

3. This bill seeks to regulate professional fiduciary corporations

This bill seeks to address a gap in existing law by authorizing professional fiduciaries to organize as a "professional corporation" pursuant to the provisions of the Moscone-Knox Professional Corporation Act. The bill require a professional fiduciary corporation to register with, and be subject to the regulation of, the PFB and all other requirements under the Professional Fiduciaries Act. In order to obtain the certificate, the professional corporation must submit various information and documentation to the PFB, including proof that all directors, officers, and shareholders of the professional corporation are

licensed under existing law. The bill would expressly prohibit an unregistered professional corporation from providing fiduciary services.

The bill amends the Probate Code to prohibit a court from appointing a professional fiduciary as a guardian, conservator, public representative, trustee, or other officer unless they are registered by the PFB, including a professional fiduciary corporation, or otherwise exempt from the licensing requirements of the Professional Fiduciaries Act. The bill defines a professional fiduciary, for purposes of the Probate Code, as a person who holds a current, unsuspended license under the Professional Fiduciaries Act (Act), is exempt from the licensing requirements of the Act, or holds a current, unsuspended certificate of registration as a professional fiduciaries corporation under the Act. The bill also makes several corresponding changes throughout the Probate Code.

SUPPORT

Professional Fiduciary Association of California (sponsor)

OPPOSITION

None received.

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.

PRIOR VOTES

Senate Business, Professions and Economic Development Committee (Ayes 11, Noes 0)

Assembly Floor (Ayes 71, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Judiciary Committee (Ayes 12, Noes 0)

Assembly Business and Professions Committee (Ayes 18, Noes 0)
