

# **BACKGROUND PAPER FOR The Professional Fiduciaries Bureau**

**Joint Sunset Review Oversight Hearing, March 16, 2023  
Assembly Committee on Business and Professions and the  
Senate Committee on Business, Professions, and Economic Development**

## **IDENTIFIED ISSUES, BACKGROUND, AND RECOMMENDATIONS REGARDING THE PROFESSIONAL FIDUCIARIES BUREAU**

### **BRIEF OVERVIEW OF THE PROFESSIONAL FIDUCIARIES BUREAU**

The Professional Fiduciaries Bureau (Bureau) was established through the enactment of the Professional Fiduciaries Act (Act) in 2006. As a regulatory agency within the Department of Consumer Affairs, protection of the public is the Bureau's highest priority. The Bureau is advised by a Professional Fiduciaries Advisory Committee, consisting of both public and professional members, which is empowered to take over the Bureau's responsibilities under the Act were the Bureau to ever be repealed.

As of September 1, 2022, the Bureau oversees 841 current and active professional fiduciary licensees, with 1,333 total licenses issued since July 1, 2008. Professional fiduciaries include non-family member conservators, guardians, trustees, personal representatives of a decedent's estate, and agents under a durable power of attorney. These professions are trusted to look after the personal and financial interests of vulnerable Californians including seniors, children, and persons with disabilities. Professional fiduciaries may provide their clients with daily care, housing and medical needs, as well as financial management services ranging from the basic payment of bills to estate and investment management.

Attorneys licensed by the State Bar are not required to be licensed as professional fiduciaries, nor are certified public accountants and enrolled agents when working within the scope of their professions. Statute additionally exempts employees and agents of trust companies, FDIC-insured institutions, public agencies, certain nonprofits, and specified broker-dealers and investment advisers from licensure. Guardians, conservators, or personal representatives of a decedent's estate serving on behalf of fewer than two individuals at the same time are also not required to be licensed; trustees and agents under a durable power of attorney are exempt if serving on behalf of three individuals or fewer at the same time.

Under the Act, the Bureau is charged with carrying out the following functions:

- Ensuring protection of the public as its highest priority;
- Promoting legal and ethical standards of professional conduct;
- Ensuring that applicants meet minimum requirements prior to licensure;
- Investigating all complaints; and,
- Taking disciplinary and administrative actions against licensees when appropriate.

## History of Fiduciaries Regulation and Legislation in California

Prior to 1957, California law recognized two forms of guardianship that could be appointed by probate courts for anyone deemed “incompetent,” including minors or adults with disabilities. This dichotomy consisted of “guardianship of the person,” managing an individual’s personal needs, such as health care, food, and shelter; and “guardianship of the estate,” managing an individual’s finances and property. Beginning in 1957, the Probate Code began distinguishing between the terms “guardianship” for children and “conservatorship” for adults unable to care for themselves due to “advanced age, illness, injury, mental weakness, intemperance, addiction to drugs or other disability.”<sup>1</sup>

The Lanterman–Petris–Short Act, signed into law by Governor Ronald Reagan in 1967, reshaped the state’s mental commitment laws, shifting the supervision and treatment of individuals with mental health disorders and disabilities away from involuntary institutionalization and toward community care. This shift propagated a distinct system of conservatorships for individuals deemed to be “gravely disabled as a result of a mental health disorder or impairment by chronic alcoholism.”<sup>2</sup> Subsequent reforms enacted in 1980 established another new form of “limited conservatorship” for the developmentally disabled and provided funding for probate court investigators to periodically examine conservatorships.<sup>3</sup>

In September of 1987, the Associated Press published a series of articles under the title “Guardians of the Elderly: An Ailing System.” Detailing the results of a year-long investigation into abuses by individuals appointed to care for aged individuals, these articles declared that “the nation’s guardianship system, a crucial last line of protection for the ailing elderly, is failing many of those it is designed to protect.” The first article in the series explained that while many guardians (or conservators) had historically been family members or public social workers, “a new industry has cropped up of professional guardians,” some of whom were profiting from the supervision of hundreds of wards.<sup>4</sup>

Following the publication of the Associated Press investigation, the Senate Subcommittee on Aging established a Conservatorship Study Steering Committee. On April 6, 1988, the subcommittee held an informational hearing on “Managing the Lives of Others: Conservatorship.” In his opening remarks, Subcommittee Chair Henry J. Mello stated: “In California, the aging of the population is accelerating more rapidly than the nation at large. This means that, over the next several decades, conservatorship will become increasingly common.” The informational hearing was intended to serve as part of a broader study “to determine whether private conservators should be licensed by the state.”<sup>5</sup>

That same year, Assembly Committee on Aging Chair Lloyd G. Connelly introduced Assembly Bill 4015, which would have required the Department of Consumer Affairs to establish “regulations and certification standards,” including “procedures for enforcement,” for private professional conservators. In response to the Associated Press investigation, Assemblymember Connelly argued that “there are people being appointed to do conservatorships that we know nothing about” and that “there have got to be standards for these folks.”<sup>6</sup> Amendments to the bill ensured that the regulatory program would be paid for solely through fees charged to professional conservators.

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<sup>1</sup> Friedman, Lawrence. “Taking Care: The Law of Conservatorship in California.” *Southern California Law Review*, vol. 61, no. 2, January 1988.

<sup>2</sup> Chapter 1667, Statutes of 1967.

<sup>3</sup> Chapter 1304, Statutes of 1980.

<sup>4</sup> Bayles, Fred *et al.* “Guardians of the Elderly: An Ailing System.” *Associated Press*, September 19, 1987.

<sup>5</sup> Senate Subcommittee on Aging, “Hearing on Managing the Lives of Others: Conservatorship” (1988). *California Senate Paper 84*. [http://digitalcommons.law.ggu.edu/caldocs\\_senate/84](http://digitalcommons.law.ggu.edu/caldocs_senate/84)

<sup>6</sup> Bayles, Fred. “Move Underway to Reform Laws Covering Guardianship of Elderly.” *Associated Press*, January 17, 1988.

Assembly Bill 4015 was vetoed by Governor George Deukmejian on September 29, 1988. In his veto message, Governor Deukmejian stated: “I have not been provided with sufficient justification to warrant the costly new licensing and regulatory program. While the fiduciary responsibility of a conservator is an important concern, it has not been demonstrated that there are more than occasional abuses to warrant overturning the current judiciary authority in this area.” The following year, Governor Deukmejian also vetoed a \$50,000 budget appropriation to study the scope of abuse by professional conservators.

Following the failure to provide for formal state-level regulation of professional conservators, the Legislature enacted more modest requirements in 1990 and 1991. Professional conservators were required to file an annual statement with their county detailing their educational background, professional references, and information relating to assets they managed and whether they had ever been removed for cause. County clerks were also required to order a fingerprint background check for each registered conservator. While these reforms improve oversight of professional conservators, the annual statements were kept confidential from the public and were made available only to the courts.<sup>7</sup>

Legislation to formally regulate professional conservators was attempted again in 1996. Senator Milton Marks introduced Senate Bill 1823, which stated its intent to create “a system of regulation and the establishment of professional standards and ethical conduct for conservators.” The bill was sponsored by representatives of public guardians and conservators. Early iterations of the bill would have defined a “professional fiduciary” as a paid, non-familial conservator or guardian who would be required to register with the Department of Aging. This language was opposed by the State Bar and the bill was narrowed to instead simply codify professional standards and revise statutory definitions. Governor Pete Wilson nevertheless vetoed the bill, writing that “there is no protection provided by this bill which does not already exist in law and in fact many existing protections are jeopardized by this bill.”

Another bill introduced in 1996 was Assembly Bill 2020 by Assemblymember John Burton. This bill similarly sought to establish a Conservator Registry within the Health and Welfare Agency Data Center, but was subsequently amended to make only minor changes to the Probate Code governing conservators and guardians. This bill died pending concurrence on the Assembly Floor.

Later efforts to establish a statewide registry for guardians and conservators were more successful in 1999 when Assembly Bill 925 by Assemblymember Robert Hertzberg was signed into law by Governor Gray Davis. The bill, sponsored by the Professional Fiduciary Association of California, began largely as a reintroduction of Assembly Bill 2020 but was amended to instead place the statewide registry for professional conservators and guardians within the Department of Justice. This statewide registry did not replace county registration, and courts retained oversight over the complaint process. The bill allowed for certain information from the registry to be disclosed to members of the public upon request.<sup>8</sup>

While the creation of the Department of Justice’s Statewide Registry represented significant progress toward state-level regulation of professional conservators and guardians, advocates persisted in their efforts to impose stronger licensing and regulation requirements. In 2000, Senator Jack O’Connell introduced Senate Bill 1881, which initially would have enacted the Professional Fiduciaries Act to provide for the full licensure of professional fiduciaries under a licensing board established by the Department of Justice. Early amendments replaced the Department of Justice with the Department of Consumer Affairs; the bill was then more significantly narrowed to simply require the Department of Consumer Affairs to conduct a study on the potential licensing and regulation of professional fiduciaries.

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<sup>7</sup> Lyon, Lucille C. “California conservatorships: An examination into ethics, standards, and judicial monitoring” (1994).

<sup>8</sup> Chapter 409, Statutes of 1999.

The Assembly policy committee analysis for Senate Bill 1881 pointed out that the proposed study was arguably duplicative of the sunrise process through which legislation to create a new board or license is considered. A sunrise questionnaire had been completed for the bill as originally drafted, but the bill was narrowed when the committee found insufficient justification for a full licensing program for professional fiduciaries. Ultimately, Governor Gray Davis vetoed the bill, agreeing that its intent was meritorious but its language was “overly prescriptive” and likely to require more than the \$100,000 in appropriated funding. Governor Davis stated that he would be “asking the Secretary of the State and Consumer Service Agency [*sic*] to advise me as to what, if any, action should be taken on this subject.”

Several bills were enacted in 2004 to increase transparency and accountability in the fiduciary professions. Senate Bill 1248 by Senator Debra Bowen required the Department of Justice to disclose certain information in its Statewide Registry to members of the public upon request.<sup>9</sup> Assemblymember Carol Liu introduced Assembly Bill 2612, which stated its intent “to create certification and education requirements for professional conservators.” Assemblymember Liu subsequently introduced Assembly Bill 1155, which required the Judicial Council to adopt a rule of court specifying minimum qualifications for professional conservators and guardians, including educational requirements proscribed by the bill.<sup>10</sup> While professional fiduciaries were still not formally licensed, they were now prohibited from registering with the Department of Justice unless they met certain standards.

Advocacy for state licensure of professional fiduciaries was again galvanized in late 2005 when another investigative series into deficiencies in the state’s conservatorship laws was published, this time by the *Los Angeles Times*. The first article in a series, which featured affective anecdotes of elderly individuals who were exploited by for-profit professional conservators, stated: “There are about 500 professional conservators in California, overseeing \$1.5 billion in assets. They hold legal authority over at least 4,600 of California’s most vulnerable adults. Yet they are subject to less state regulation than hairdressers or guide-dog trainers. No agency licenses conservators or investigates complaints against them.”<sup>11</sup>

The *Times* followed its investigative series with an editorial explicitly calling for legislation to establish formal state-level licensure of professional conservators and guardians. The editorial argued that the current laws governing minimum standards for conservators were insufficient and would not affect most professional conservators already engaged in providing services. The editorial concluded: “The state Department of Consumer Affairs, which oversees the licensing of many other professions, should add conservators to its purview.”<sup>12</sup>

Shortly after the publication of the *Times* investigation and editorial, two informational hearings were convened by legislative committees on the topic of licensing conservators and guardians. The first hearing was held on December 7, 2005 by the Joint Committee on Boards, Commissions, and Consumer Protection—then the committee responsible for carrying out the sunrise process required for the establishment of new licensing boards. The Joint Committee’s background paper stated that the intent of the hearing was “to address inequities in conservatorships and guardianships in California by receiving testimony and input from interested parties regarding the current status of conservatorships, and whether a greater oversight by the state is warranted and what should be the nature of that oversight.” It was later reported that Joint Committee Chair Liz Figueroa intended to introduce a bill to license conservators.<sup>13</sup>

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<sup>9</sup> Chapter 548, Statutes of 2004.

<sup>10</sup> Chapter 625, Statutes of 2004.

<sup>11</sup> Fields, Robin *et al.* “When a Family Matter Turns Into a Business.” *Los Angeles Times*, November 13, 2005.

<sup>12</sup> “Deserving of Care.” Editorial. *Los Angeles Times*, November 17, 2005.

<sup>13</sup> Leonard, Jack. “Licensing of Conservators Urged at Hearing.” *Los Angeles Times*, December 8, 2005.

A second hearing took place December 12, 2005 in downtown Los Angeles, where the Assembly and Senate Judiciary Committees held a joint hearing on potential reforms to the conservatorship process. A background paper entitled “Better Protection for Our Most Vulnerable Adults: Is it Time to Reform the Conservatorship Process?” provided an overview of the conservatorship and guardianship systems and summarized the *Times* findings. The background paper argued that “given the important issues at stake, private conservators should be licensed and regulated in the same manner as other professions that have a fiduciary relationship with clients.” The background paper stated that Assembly Committee Chair Dave Jones intended to amend a bill to contain “nearly all of the options for reform,” including licensure.

Both committee chairs followed through on their pledges to introduce bills to license professional conservators and guardians when the Legislature reconvened in 2006. First, Assemblymember Jones amended Assembly Bill 1363 to contain a number of reforms to “better prevent abuse of vulnerable and frail individuals.” Sponsored by Bet Tzedek Legal Services, early iterations of the bill required for a new Board of Conservators and Guardians to be established by the Department of Consumer Affairs. Those provisions were later removed to reconcile the bill with parallel efforts initiated in the Senate.<sup>14</sup>

The bill to finally create a licensing entity for professional fiduciaries was introduced by Senator Figueroa as Senate Bill 1550, sponsored by the Professional Fiduciary Association of California. This bill established the Professional Fiduciaries Act, which in early iterations would have been enforced by a Board of Professional Fiduciaries within the Department of Consumer Affairs. It was reported that aides to Governor Arnold Schwarzenegger had concerns about the bill<sup>15</sup> and that the Governor had “criticized such boards as bloated bureaucracy and advocated their replacement with bureaus.”<sup>16</sup> The bill was ultimately amended in the final weeks of the session to instead establish the Professional Fiduciaries Bureau, advised by a Professional Fiduciaries Advisory Committee.<sup>17</sup>

On September 27, 2006, Governor Schwarzenegger signed Senate Bill 1550, Assembly Bill 1363, and two other bills comprising a legislative package collectively referred to as the Omnibus Conservatorship and Guardianship Reform Act. Governor Schwarzenegger stated in signing the legislation that “we have a responsibility to help ensure that individuals entrusted with the well-being of our most vulnerable citizens are not taking advantage of or harming them.”<sup>18</sup> After decades of advocacy, a formal licensing scheme for professional fiduciaries was enacted, and the Bureau was established.

### **Modern Reforms and the #FreeBritney Movement**

Much of the victory celebrated by reform advocates proved short-lived when Governor Schwarzenegger vetoed approximately \$17 million in budget funding that had been allocated to implement Assembly Bill 1363 and other elements of the legislative package he had signed just months prior. Assemblymember Jones argued that the budget cut “[fell] heavily on seniors and others who have been taken advantage of by conservators lacking sufficient court oversight” and decried that the Governor had not provided advocates with notice.<sup>19</sup> A subsequent budget trailer bill enacted in 2011 made compliance with Assembly Bill 1363 by superior courts optional until funding was appropriated for that purpose.<sup>20</sup>

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<sup>14</sup> Chapter 493, Statutes of 2006.

<sup>15</sup> Leonard, Jack. “Gov. Opposes Bill Licensing Conservators.” *Los Angeles Times*, August 5, 2006.

<sup>16</sup> Leonard, Jack. “Conservator Reform Awaits Capitol Action.” *Los Angeles Times*, August 14, 2006.

<sup>17</sup> Chapter 491, Statutes of 2006.

<sup>18</sup> “Governor signs conservatorship legislation.” *Woodland Daily Democrat*, September 29, 2006.

<sup>19</sup> “Schwarzenegger Vetoes Conservatorship Reform Funding.” *Metropolitan News-Enterprise*, August 27, 2007.

<sup>20</sup> Chapter 10, Statutes of 2011.

Despite the setbacks encountered by other portions of the Omnibus Conservatorship and Guardianship Reform Act, implementation of Senate Bill 1550 was more immediately successful. The Bureau was established in 2007 after receiving approximately \$1 million in funds as a loan from the Bureau of Automotive Repair. The Bureau's licensing program was rolled out on July 1, 2008, though a committee bill extended the deadline for a professional fiduciary to become licensed until January 1, 2009.<sup>21</sup>

Shortly after the Bureau began issuing licenses, it became apparent that the number of anticipated license applicants had been dramatically overestimated during the sunrise process. Approximately 1,300 professional fiduciaries who had been registered with the Department of Justice were expected to seek licensure. Instead, only 450 licenses were issued by the Bureau by the end of Fiscal Year (FY) 2009-10. The Reorganization Plan proposed by Governor Schwarzenegger in his FY 2009-10 May Budget Revision recommended that the Bureau be consolidated with the California Board of Accountancy, both to provide greater revenue stability and as part of a broader effort to reduce governmental bureaucracy. The Senate Business, Professions, and Economic Development Committee held a hearing to consider this and other proposed reorganizations in June 2009, ultimately voting against consolidation.

The Bureau went through its first sunset review in 2011, at which time the Senate Committee on Business, Professions, and Economic Development again discussed the Bureau's unexpectedly small licensee population and the proposal to merge the Bureau into the Board of Accountancy. The Board of Accountancy had itself already voted to oppose the proposal out of concern for consumer confusion, dissimilarities in professional mandates, and the potential for inappropriate financial subsidization across professions. While the Bureau's first sunset bill did enact some reforms, it ultimately extended the Bureau's repeal date until January 1, 2015.<sup>22</sup>

During the Bureau's next sunset review in 2014, the Senate Committee on Business, Professions, and Economic Development and the Assembly Committee on Business, Professions, and Consumer Protection again considered the Bureau's long-term sustainability given its small licensing population. The committees again determined that preserving licensure of professional fiduciaries by the Bureau in its current form was appropriate; the Bureau's sunset bill extended its repeal date until January 1, 2019.<sup>23</sup> A separate bill implemented a handful of additional reforms identified through sunset review.<sup>24</sup> The Bureau's third sunset review in 2018 did not discuss any potential consolidation or reorganization to the extent of prior reviews, and the resulting legislation also only enacted modest reforms.<sup>25</sup>

A new wave of public and legislative interest in oversight of professional conservators arose when the *New York Times* aired a documentary titled "Framing Britney Spears" in February 2021. Detailing the rise to fame and subsequent media mistreatment of Britney Spears, this documentary drew significant attention to the circumstances surrounding the pop star's involuntary conservatorship under the control of her father.<sup>26</sup> The documentary, along with a follow-up aired in September 2021, coincided with the inception of the #FreeBritney movement among fans advocating for Spears to regain full control over her life and finances. While Spears's conservatorship was ultimately terminated in November 2021, the documentary and related movement sparked a national outcry about how the conservatorship system could be weaponized as a tool to abuse and exploit conservatees.

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<sup>21</sup> Chapter 354, Statutes of 2007.

<sup>22</sup> Chapter 447, Statutes of 2011.

<sup>23</sup> Chapter 344, Statutes of 2014.

<sup>24</sup> Chapter 336, Statutes of 2014.

<sup>25</sup> Chapter 681, Statutes of 2018.

<sup>26</sup> "Framing Britney Spears." *The New York Times Presents*, February 5, 2021.

Shortly after “Framing Britney Spears” was initially aired, a package of legislation was introduced to respond to issues highlighted in the documentary. Assembly Bill 1194 by Assemblymember Evan Low, accompanied by companion bills authored by Senators Ben Allen and John Laird, enacted a series of new requirements on professional fiduciaries and sought to empower the Bureau to engage in more robust enforcement of malfeasant conservators. Among other provisions, language in Assembly Bill 1194 requires the Bureau to take action against a licensee for violations of law, breaches of fiduciary duty causing financial or physical harm or mental suffering to their client, and cases of elder abuse.<sup>27</sup> Governor Gavin Newsom signed the bill into law in September 2021.<sup>28</sup>

While advocates for conservatorship oversight and fans of Britney Spears celebrated the reforms enacted by Assembly Bill 1194, the Bureau has raised concerns that implementation of the bill’s mandates will be challenging within existing resources. New workload and enforcement-related expenditures are expected to place pressures on the Bureau’s fund condition, with already comparatively high fees charged to licensed fiduciaries potentially in need of further increase. It is likely that existential discussions around the financial sustainability of the Bureau as a standalone licensing entity will recur within this context as the Legislature remains dedicated to ensuring adequate state oversight and enforcement of professional fiduciaries.

## **Mission Statement**

The Bureau’s current mission statement is:

*“To protect consumers through licensing, consumer education, and enforcement of the Professional Fiduciaries Act and promote and uphold competency and ethical standards across the profession.”*

## **Staff**

The duty of enforcing and administering the Act is vested in the chief of the bureau, who is responsible to the director of the Department of Consumer Affairs. The Governor is responsible for appointing the chief of the bureau, subject to confirmation by the Senate. As an agency within the Executive Branch, the chief of the bureau serves under the direction and supervision of the Director of Consumer Affairs and at the pleasure of the Governor.<sup>29</sup> The Bureau’s current chief is Rebecca May, who has served in that position since May of 2017.

Statute authorizes the Bureau to employ additional employees under the direction of the chief as necessary to carry out the Act.<sup>30</sup> Currently, the Bureau has three full-time staff: its chief, one enforcement analyst, and one licensing analyst. The 2022-23 Budget authorized the Bureau to hire an additional 1.5 positions to implement its legislative mandates under Assembly Bill 1194. The Bureau states that three staff are all that can be sustained through the current fees charged to its licensee population, and that prolonged staff absences and departures can potentially be significantly problematic. The Bureau further states that due to the highly specialized nature of its work, it can be difficult to temporarily fill any vacancies.

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<sup>27</sup> Chapter 417, Statutes of 2021.

<sup>28</sup> Colliver, Victoria. “Newsom signs #FreeBritney bill to help reform conservatorship laws.” *Politico*, September 30, 2021.

<sup>29</sup> Bus. & Prof. Code, § 6510

<sup>30</sup> Bus. & Prof. Code, § 6513

## Advisory Committee Membership

The Act establishes a Professional Fiduciaries Advisory Committee within the Bureau. The Advisory Committee consists of seven members—three actively licensed professional fiduciaries and four members of the public. One of the public members is required to be a member of a nonprofit organization that advocates for the elderly, and another public member is required to be a probate court investigator. These two public members are appointed by the Governor along with the professional members; the remaining two public members are respectively appointed by the Senate Committee Rules and the Speaker Assembly. Each member may serve a maximum of two consecutive four-year terms.

The current composition of the Advisory Committee is as follows, including one vacancy:

Name and Appointment Type	Appointment	Expiration of Current Term	Appointing Authority
<b>Chi K. Elder</b> Public Member	01/15/2020	01/01/2027	Senate Rules
<b>Bertha Sanchez Hayden</b> Public Member (Nonprofit Organization)	03/06/2020	01/01/2023	Governor
<b>Wendy Hatch</b> Professional Member	01/02/2019	01/01/2023	Governor
<b>Denise Nelesen</b> Public Member	09/11/2020	01/01/2023	Assembly Speaker
<b>James Moore</b> Professional Member	01/02/2018	01/01/2023	Governor
<b>Elizabeth R. Ichikawa</b> Public Member (Probate Court Investigator)	10/20/2020	01/01/2023	Governor
<b>Vacant</b> Professional Member	--	--	Governor

The Bureau is required to meet and consult with the Advisory Committee “regarding general policy issues related to professional fiduciaries.” The Advisory Committee is required to do the following:

1. Examine the functions and policies of the Bureau and make recommendations with respect to policies, practices, and regulations as may be deemed important and necessary by the director or the chief to promote the interests of consumers or that otherwise promote the welfare of the public.
2. Consider and make appropriate recommendations to the Bureau in any matter relating to professional fiduciaries in this state.



3. Provide assistance as may be requested by the Bureau in the exercise of its powers or duties.
4. Meet at least once each quarter. All meetings of the committee shall be public meetings.

The Act contains what has been referred to as a “reverse sunset” clause. Statute provides that if the Bureau becomes inoperative or is repealed, “the committee shall succeed to and is vested with all the duties, powers, purposes, responsibilities, and jurisdiction, not otherwise repealed or made inoperative, of the Bureau and its chief.” In theory, therefore, if the Bureau’s sunset date were not extended, the Advisory Committee would become analogous to a semiautonomous regulatory board under the Department of Consumer Affairs.<sup>31</sup>

### Fiscal and Fund Analysis

The Bureau is entirely special funded and derives the majority of its funding through the collection of fees charged to professional fiduciaries. Revenue received by the Bureau is deposited into the Professional Fiduciaries Fund. These funds are available for expenditure by the Bureau only upon appropriation by the Legislature.<sup>32</sup>

The Act prescribes the various fees that may be charged by the Bureau.<sup>33</sup> Statute does not cap the amount the Bureau may charge through the adoption of regulations. However, fee levels have not been adjusted since the Bureau was established in 2007, despite what the Bureau describes as regular increases in its operational costs.

Fee	Current Fee Amount	FY 2018/19 Revenue	FY 2019/20 Revenue	FY 2020/21 Revenue	FY 2021/22 Revenue	% of Total Revenue
Renewal Fees	\$700	\$468	\$483	\$523	\$515	81.10%
Initial License Fee	\$600 + proration	\$55	\$45	\$85	\$66	10.39%
Application Fee	\$400	\$47	\$45	\$37	\$36	5.67%
Cite and Fines	<i>Variable</i>	\$17	\$24	\$29	\$14	2.2%
Delinquency Fee	\$150	\$2	\$3	\$3	\$3	.47%
Investment Income	<i>Variable</i>	\$8	\$8	\$2	\$1	.16%
<b>Total Revenue</b>		<b>\$597</b>	<b>\$607</b>	<b>\$679</b>	<b>\$635</b>	<b>100%</b>
<i>(dollars in thousands)</i>						

As of the end of FY 2021-22, the Bureau’s current reserve level is 3.4 months. Statute generally prohibits entities within the Department of Consumer Affairs from having more than 24 months in reserve.<sup>34</sup> While historically the Bureau has maintained a structural balance in its special fund since paying off its startup loan, its expenditures are likely to increase substantially due to the workload associated with implementing Assembly Bill 1194. The Bureau has indicated that it believes a fee increase will be necessary to reach the spending authority it received in the Governor’s 2022-23 Budget to meet its legislative mandates.

<sup>31</sup> Bus. & Prof. Code, § 6511

<sup>32</sup> Bus. & Prof. Code, § 6590

<sup>33</sup> Bus. & Prof. Code, § 6592

<sup>34</sup> Bus. & Prof. Code, § 28.5

<b>Fund Condition</b>						
<i>(Dollars in Thousands)</i>	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22*	FY 2022/23**	FY 2023/24**
Beginning Balance	\$220	\$291	\$258	\$343*	\$315	\$21
Revenues and Transfers	\$597	\$607	\$679	\$635	\$808	\$800
<b>Total Revenue</b>	<b>\$817</b>	<b>\$898</b>	<b>\$937</b>	<b>\$785</b>	<b>\$1,123</b>	<b>\$821</b>
Budget Authority	\$562	\$604	\$576	\$650	\$1,050	\$1,082
<b>Expenditures</b>	<b>\$521</b>	<b>\$633</b>	<b>\$594</b>	<b>\$663</b>	<b>\$1,102</b>	<b>\$1,134</b>
<b>Fund Balance</b>	<b>\$296</b>	<b>\$265</b>	<b>\$343</b>	<b>\$315</b>	<b>\$21</b>	<b>- \$313</b>
<b>Months in Reserve</b>	<b>5.6</b>	<b>5.4</b>	<b>6.2</b>	<b>3.4</b>	<b>.2</b>	<b>- 3.2</b>
<i>*Includes prior year adjustments</i>						
<i>**Includes direct draws to the fund</i>						

The Bureau's largest expenditures are administrative, which includes the costs of its executive staff, administrative support, and fiscal services. Its next highest expenditure is its pro rata payment to the Department of Consumer Affairs, followed by costs associated with enforcement, and then finally its licensing program costs.

<b>Expenditures by Program Component</b>								<i>(dollars in thousands)</i>	
	FY 2018/19		FY 2019/20		FY 2020/21		FY 2021/22		
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	
Enforcement	\$97,441	\$41,470	\$108,435	\$89,318	\$106,286	\$69,403	\$108,974	\$26,534	
Licensing	\$77,953	\$15,696	\$86,748	\$19,863	\$85,029	\$15,719	\$87,179	\$17,515	
Administration	\$151,987	\$11,772	\$165,813	\$14,897	\$158,345	\$11,789	\$164,692	\$13,136	
DCA Pro Rata	--	\$101,085	--	\$109,659	--	\$103,500	--	\$125,000	
<b>TOTALS</b>	<b>\$327,381</b>	<b>\$170,023</b>	<b>\$360,996</b>	<b>\$233,737</b>	<b>\$349,660</b>	<b>\$200,411</b>	<b>\$360,845</b>	<b>\$182,185</b>	

## Licensing

All professionals licensed by the Bureau are licensed as professional fiduciaries regardless of whether they principally act as a guardian, conservator, trustee, personal representative of a decedent's estate, or agent under durable power of attorney for healthcare and/or finances. Licenses must be renewed annually and expire the last day of the licensee's birth month. If a license is not renewed within three years of expiration, it cannot be renewed and is automatically canceled. The Bureau was recently authorized to place licenses that meet certain requirements into retired or inactive status for professional fiduciaries who are not actively practicing.

As of January 2023, approximately 836 professional fiduciaries held an active license from the Bureau, and approximately 489 previously issued licenses were delinquent or had expired. This reflects a modest growth over the prior four years. However, it is still significantly below the estimated 1,300 prior registrants with the Department of Justice who had been expected to obtain a license from the Bureau when the Act was established in 2006.

Licensee Population					
		FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22
<b>Professional Fiduciary</b>	Active	756	766	813	836
	Delinquent/Expired	362	400	422	489
	Retired Status	0	0	0	0
	Inactive	0	0	0	0

To qualify for licensure, applicants must demonstrate that they are at least 21 years of age, have not committed any crimes or acts that are grounds for denial, have met prelicense education requirements, and possess either a qualifying college degree and/or have qualifying experience in the profession. Applicants must complete Live Scan fingerprinting for purposes of a criminal history check and must consent to the Bureau conducting a credit check. The applicant must then take and pass an examination developed and scored by the Center for Guardianship Certification and administered by PSI.

Statute requires the Bureau to “approve or deny licensure in a timely manner.” Per the Bureau’s regulations, applicants must be informed within 90 days of the Bureau receiving their application whether it is considered complete or if additional information is needed. The Bureau’s performance target for processing complete applications is 45 days from receipt of the complete application to determine eligibility for the licensure examination, and 15 days from receipt of the initial license fee to grant a license.

As of the end of FY 2021-22, the Bureau averaged 13 days from receipt of a complete application to determine the candidate’s eligibility to take the examination; the Bureau then averaged five days to issue a license upon receipt of the initial license fee. This represents a significant improvement since the Bureau’s most recent prior sunset review, at which time the Bureau averaged 50 days to determine examination eligibility. The Bureau credits its increased use of email communication for this improvement.

According to the Bureau, it denied zero license applications from FY 2019-20 through FY 2021-22.

Licensing Data					
Application Type		Received	Approved/Issued	Cycle Times	
				Complete Apps	Incomplete Apps
FY 2019/20	(Exam)	113	80	46	101
	(License)	59	59	9	N/A
	(Renewal)	696	696	N/A	N/A
FY 2020/21	(Exam)	94	101	47	133
	(License)	89	89	15	N/A
	(Renewal)	730	730	N/A	N/A
FY 2021/22	(Exam)	85	70	17	133
	(License)	70	70	5	N/A
	(Renewal)	774	774	N/A	N/A

## Education

The Act requires applicants for licensure as a professional fiduciary to demonstrate that they have completed at least one of the following education and training pathways for licensure:

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 specified substantive fiduciary responsibilities.
3. At least five years of experience with specified substantive fiduciary responsibilities.<sup>35</sup>

Individuals, entities, agencies, and associations that propose to offer educational programs are required to obtain approval from the Bureau.<sup>36</sup> The Bureau has approved two schools to provide pre-licensing and continuing education. The Bureau does not review schools once approved, but it does review individual courses. Pursuant to regulation, in order for any school to be approved by the Bureau, they must be accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation.

## Continuing Education

Professional fiduciaries must complete 15 hours of continuing education (CE) every year as part of their license renewal.<sup>37</sup> Two hours of that coursework must include instruction in ethics and/or cultural competency beginning January 1, 2023. Licensees are prohibited from charging their clients for the costs of CE. Licensees' CE requirements were temporarily waived by the Governor during the COVID-19 pandemic pursuant to Executive Order N-40-20.

Compliance with CE requirements is self-certified by licensees when they apply for renewal of their license. The Bureau conducts periodic CE audits to confirm compliance. Licensees must then provide proof of completion within 10 days of receiving a request. Approximately five percent of active licensees are randomly selected to be audited during a CE audit. Licensees who cannot prove compliance with their CE requirements are subject to a citation with an order of abatement, with or without a fine.

Two audits of CE compliance were conducted by the Bureau over the past four years. During the first audit, conducted in December 2018 prior to the COVID-19 pandemic, 47 active licensees received audit letters, and five citations were issued for failure to provide proof of compliance. The second audit involved 12 licensees who had previously requested a CE waiver from the Bureau due to the COVID-19 pandemic. The Bureau contacted the licensees before the April 30 deadline, requesting proof of continuing education hours gained for the 2020 and 2021 renewal years. Of the 12 licensees audited, four licensees were cited for failure to provide proof of compliance.

As previously discussed, the Bureau is responsible for approving education providers, including CE providers. The Bureau also reviews and approves specific CE courses. Providers are not audited.

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<sup>35</sup> Bus. & Prof. Code, § 6533

<sup>36</sup> Bus. & Prof. Code, § 6540

<sup>37</sup> Bus. & Prof. Code, § 6538

## Examination

The Act requires every applicant for licensure as a professional fiduciary to take and pass a licensing examination administered by the Bureau.<sup>38</sup> Applicants are required to pass a computer-based, multiple-choice examination currently consisting of two sections: one pertaining to national laws and professional practices, and the other related to California-specific laws and professional practices. This examination is currently only offered in English. The Bureau contracts with the Center for Guardianship Certification for the development, scoring, and analysis of the Bureau’s licensing examination. The Department of Consumer Affairs contracts on behalf of the Bureau with a separate vendor, PSI, to administer the examination, using computer-based testing at 20 sites throughout California and 22 sites across the country.

In 2018, the Office of Professional Examination Services (OPES) within the Department of Consumer Affairs conducted an occupational analysis of the Bureau’s examination in accordance with statute<sup>39</sup> to ensure that its content reflects the knowledge required for safe, newly licensed practice. This occupational analysis was followed by an audit of the Center for Guardianship Certification examination program in 2019. According to the Bureau, OPES is currently working with the Center for Guardian Certification to update the occupational analyses and examination.

Roughly half of all first-time test takers pass the California portion of the examination, with a slightly higher pass rate for the national portion. Retakers have modestly lower pass rates. Passage rates have risen slightly in recent years overall.

<b>Examination Data</b>			
	<b>Professional Fiduciaries Examination</b>	<b>California Portion</b>	<b>National Portion</b>
FY 2018/19	Number of Candidates	141	153
	Overall Pass %	49%	44%
	Overall Fail %	51%	56%
FY 2019/20	Number of Candidates	114	115
	Overall Pass %	46%	45%
	Overall Fail %	54%	55%
FY 2020/21	Number of Candidates	165	156
	Overall Pass %	52%	65%
	Overall Fail %	48%	35%
FY 2021/22	Number of Candidates	149	129
	Overall Pass %	48%	61%
	Overall Fail %	52%	39%
Date of Last Occupational Analysis		2018	2019

<sup>38</sup> Bus. & Prof. Code, § 6539

<sup>39</sup> Bus. & Prof. Code, § 139

## Enforcement

The Act authorizes the Bureau to investigate the actions of a professional fiduciary upon receipt of a complaint from any person. The Bureau is also required to investigate complaints it receives against a licensee from the public, a public agency, or the Department of Consumer Affairs. The Act expressly provides that a licensee may be disciplined for any of a series of causes including conviction of a felony or substantially related misdemeanor; fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetence in practice, or unprofessional conduct in the practice of a professional fiduciary; failure to pay a monetary sanction or civil penalty; or violations of the Act, or any other statutes, rules, or regulations pertaining to duties or functions of a professional fiduciary.

The Bureau is required to impose sanctions upon a professional fiduciary who is found to have done any of the following:

1. Breached a legal or fiduciary duty to a client and thereby caused financial or physical harm or mental suffering to the client.
2. Abused an elder or a dependent adult client, as defined by Welfare and Institutions Code.
3. Violated a statute or regulation related to the Act.

Sanctions may include either administrative citations and fines or license suspension, probation, or revocation. The Bureau has discretion to take disciplinary action against licensees for various causes.<sup>40</sup> The Bureau is required to revoke a professional fiduciary's license if it finds that the licensee either knowingly, intentionally, or willfully breached a legal or fiduciary duty to an elder or dependent adult client that constitutes abuse as defined by Welfare and Institutions Code or caused serious physical or financial harm or mental suffering to a client through gross negligence or gross incompetence. Information regarding sanctions imposed on licensees must be published on the Bureau's website.<sup>41</sup>

Enforcement proceedings initiated by the Bureau are conducted in accordance with the Administrative Procedure Act and are prosecuted by the Attorney General's office.<sup>42</sup> The Bureau may also refer cases to the Attorney General or a local district attorney for criminal prosecution.<sup>43</sup> The Bureau is authorized to enter into settlements in lieu of the issuance of an accusation or statement of issues, which must also be published on the Bureau's website.<sup>44</sup>

The Bureau's performance targets for enforcement include a goal of five days to assign each complaint to an investigator and 365 days to close an investigation. The Bureau states that while historically it has been able to meet its performance targets, insufficient staffing has prolonged its timeline for case closure. The Bureau has also expressed significant concerns that the number of complaints it will receive and be required to investigate will increase dramatically with the implementation of Assembly Bill 1194, further challenging its ability to meet its targets. The Bureau received a budget augmentation in the Governor's 2022-23 Budget to hire additional enforcement staff; however, it anticipates needing a fee increase to fully fund this new workload.

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<sup>40</sup> Bus. & Prof. Code, § 6584

<sup>41</sup> Bus. & Prof. Code, § 6580

<sup>42</sup> Bus. & Prof. Code, § 6582

<sup>43</sup> Bus. & Prof. Code, § 6582.5

<sup>44</sup> Bus. & Prof. Code, § 6582.2

<b>Enforcement Statistics</b>			
	FY 2019/20	FY 2020/21	FY 2021/22
<b>COMPLAINTS</b>			
Intake			
Received	142	114	119
Closed without Referral for Investigation	31	21	12
Referred to Investigation	109	95	107
Source of Complaint			
Public	114	111	109
Licensee/Professional Groups	0	0	0
Governmental Agencies	0	0	1
Internal	28	3	9
Average Time to Refer for Investigation (from receipt of complaint / conviction to referral for investigation)	2	2	2
Average Time to Closure (from receipt of complaint / conviction to closure at intake)	3	2	1
Average Time at Intake (from receipt of complaint / conviction to closure or referral for investigation)	2	2	2
<b>INVESTIGATION</b>			
Non-Sworn Investigation			
Opened	109	95	107
Closed	90	65	125
Average days to close (from assignment to investigation closure)	178	330	457
Pending (close of FY)	89	119	95
All investigations			
Opened	109	95	145
Closed	90	72	125
Average days for all investigation outcomes (from start investigation to investigation closure or referral for prosecution)	178	340	457
Average days for investigation closures (from start investigation to investigation closure)	348	328	455
Average days for investigation when referring for prosecution (from start investigation to referral for prosecution)	334	90	181
Average days from receipt of complaint to investigation closure	349	389	457
Pending (close of FY)	89	119	95
<b>CITATION AND FINE</b>			
Citations Issued	30	8	3
Average Days to Complete (from complaint receipt / inspection conducted to citation issued)	43	92	429
Amount of Fines Assessed	\$43,550	\$35,000	\$10,000
Amount of Fines Reduced, Withdrawn, Dismissed	\$2,750	\$19,500	\$0
Amount Collected	\$18,050	\$10,500	\$1,000

<b>ACCUSATION</b>			
Accusations Filed	3	1	0
Accusations Declined	0	0	0
Accusations Withdrawn	1	0	0
Accusations Dismissed	0	0	0
Average Days from Referral to Accusations Filed (from AG referral to Accusation filed)	133	21	0
<b>DISCIPLINE</b>			
AG Cases Initiated (cases referred to the AG in that year)	6	1	0
AG Cases Pending Pre-Accusation (close of FY)	3	0	0
AG Cases Pending Post-Accusation (close of FY)	4	6	0
<b>DISCIPLINARY OUTCOMES</b>			
Revocation	1	0	0
Surrender	2	2	1
Probation	0	0	1
Public Reprimand / Public Reproof / Public Letter of Reprimand	1	0	1
Other	0	0	0
<b>DISCIPLINARY ACTIONS</b>			
Proposed Decision	0	0	0
Default Decision	1	0	0
Stipulations	1	2	3
Average Days to Complete After Accusation (from Accusation filed to imposing formal discipline)	198	269	510
Average Days from Closure of Investigation to Imposing Formal Discipline	429	367	683
Average Days to Impose Discipline (from complaint receipt to imposing formal discipline)	806	1,047	758

The number of disciplinary actions taken by the Bureau has remained consistent since its prior sunset review. The Bureau prioritizes complaints where there is the potential for serious harm to the public. The Bureau utilizes a similar complaint prioritization process to the one established by the Department of Consumer Affairs for healing arts boards.

Assembly Bill 1194 included a provision requiring courts to report to the Bureau whenever a professional fiduciary is determined to have abused a conservatee, been subjected to penalties, or removed for cause. However, courts will not be required to implement this provision until an appropriation is made by the Legislature for this purpose. If such an appropriation is made, the number of complaints received by the Bureau may grow. The Bureau does not otherwise receive reports from the courts.

From FY 2018-19 through FY 2021-22, the Bureau issued 56 citations to licensees. The five most common causes for the issuance of a citation are reporting violations, failure to act in the best interest of the consumer, failure to manage the estate appropriately, negligence/willful violation of duty/incompetence in practice, and failure to produce records upon request by the Bureau. The Bureau issues fines between \$500 and \$5,000 depending upon the violation, with the average being \$1,000.



## **Public Information Policies**

The Bureau uses its website to keep licensees and the public apprised of its activities. The website contains copies of newsletters, announcements and records of Advisory Committee meetings, and proposed and approved regulations. Notices are also emailed to an interested parties listserv.

All meetings of the Advisory Committee are webcasted by the Bureau when possible. During the COVID-19 pandemic, public participation was accommodated through Webex, and this has continued after the resumption of in-person meetings. Webcasts are published on YouTube after the conclusion of meetings, where they remain indefinitely.

## **Workforce Development and Job Creation**

Given the Bureau's relatively small licensee population and in recognition of a growing need for more professional fiduciaries to serve California's rapidly growing senior population, the Bureau and its Advisory Committee state that they have been exploring new ways to better promote the Bureau and highlight the profession through better engagement and outreach. Additionally, the Bureau's current strategic plan seeks to increase the licensee population and thereby the professional fiduciary workforce by expanding the Bureau's reach to consumers, potential licensees, and current licensees.

The Bureau has identified what it believes to be several challenges to growing the professional fiduciary workforce. The Bureau notes that recent negative portrayals of conservators in the media and the general public's lack of understanding of the work that professional fiduciaries do likely contribute to few individuals seeking licensure. Further, the Bureau believes its relatively high \$700 annual licensing fee may be a barrier to licensure.

## **COVID-19 Pandemic Response**

On March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency as a result of the impacts of the COVID-19 public health crisis. The Bureau implemented a teleworking policy and implemented a new process of communicating via email with applicants regarding examination and initial licensing information and licensees regarding renewals resulting in shorter processing times. The Bureau states that it was able to quickly address any initial connectivity issues, ensuring the Bureau was able to maintain its licensing and enforcement functions.

The Governor signed an executive order on March 30, 2020 that created a new process for boards, bureaus, and the public to request waivers of requirements related to healing arts professional licensing through the DCA.<sup>45</sup> Through this process, the Director of Consumer Affairs temporarily waived statutes requiring individuals to complete education or examination requirements as a condition of license renewal, which was utilized by professional fiduciaries through the Bureau. The Bureau did not otherwise request or utilize any other waivers.

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<sup>45</sup> Executive Order N-39-20

## **PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS**

The Bureau last underwent sunset review in 2018. During the prior sunset review, committee staff raised a number of issues and provided recommendations. Below is a summary of actions which have been taken since that time to address these issues. Previous issues that were not completely addressed or may otherwise still be of concern they are further discussed under “Current Sunset Review Issues.”

**Prior Issue #1: Long term fund condition.** The previous sunset background paper noted that there is no mandated reserve fund level for the Bureau. The Committees recommended that the Bureau consider taking a look at licensing fees to ensure a proper reserve. In response, the Bureau states that it has maintained a careful watch over its revenue and expenditure levels to ensure adequate reserve levels are always maintained. However, the Bureau believes that a fee increase will be needed and has worked to carefully assess how much to increase fees and how to divide the amount between applicants and licensees, taking into consideration additional workload needs and reduced revenue due to licensees electing to retire or become inactive now that those statuses are an option.

**Prior Issue #2: Unlicensed Representatives and Enrolled Agents.** The background paper questioned whether to require licensure of a personal representative of a decedent’s estate, for two or more individuals at the same time who are not related to the professional fiduciary or to each other. The Committees also recommended that an exemption in the Act should be clarified for persons enrolled as an agent to practice before the Internal Revenue Service. The Bureau’s sunset bill was subsequently amended to require licensure of personal representatives of a decedent estate. Additionally, the Bureau states that it is supportive of the Legislature’s efforts to further clarify that enrolled agents are prohibited from performing work that requires a professional fiduciary license without being duly licensed.

**Prior Issue #3: BreEZe Implementation.** The background paper recommended that the Bureau should update the Committees about the current status of its implementation of BreEZe. In response, the Bureau has explained that it is not utilizing BreEZe because it is one of the 19 boards and bureaus in the former Release 3 implementation of BreEZe that were removed from the BreEZe project entirely in 2015. The Bureau continues to work with OIS, participating in the PAL process and researching alternatives to leverage the Department of Consumer Affairs’s existing IT infrastructure. The Department is also assisting the Bureau with seeking funding through the California Department of Technology’s Modernization Fund (TMF), a program created to modernize government and improve digital services for California residents and state employees.

**Prior Issue #4: Registered business entities.** The prior sunset background paper proposed that the Bureau obtain information on the forms of the business entities of current licensees, as well as the types of business entity they would desire if it were to be allowed, to potentially consider licensure for business entities. The Bureau stated that it was open to this survey and that it recognized that providing an “entity” license may increase continuity of care for clients in the event a fiduciary is no longer able to carry out their duties or wants to retire or move to another profession. However, the Bureau expressed concerns that allowing business entities to be licensed would shield individual licensees from liability for consumer harm. Bureau staff ultimately held a stakeholder meeting in December 2018 but a survey was not conducted.

**Prior Issue #5: Continued regulation of professional fiduciaries by the Bureau.** The prior sunset background paper recommended that the Bureau continue to license and regulate professional fiduciaries. The Bureau concurred with that conclusion and continues to believe it should be extended.

## CURRENT SUNSET REVIEW ISSUES FOR THE PROFESSIONAL FIDUCIARIES BUREAU

### ADMINISTRATIVE ISSUES

**ISSUE #1:** *Reverse Sunset Provision. Should the Act continue to provide that if the Bureau is repealed, the Professional Fiduciaries Advisory Committee shall assume its responsibilities?*

**Background:** Section 6511 in the Professional Fiduciaries Act provides that “if the Bureau becomes inoperative or is repealed ... the [Professional Fiduciaries Advisory Committee] shall succeed to and is vested with all the duties, powers, purposes, responsibilities, and jurisdiction, not otherwise repealed or made inoperative, of the Bureau and its chief.” This statute would have the effect of reconstituting the Advisory Committee as a traditional regulatory board, empowered to continue enforcement of the Act. This language was included in the legislation establishing the Bureau, Senate Bill 1550, shortly after the bill was amended to provide for licensure by a bureau rather than a Board of Professional Fiduciaries.

As previously discussed, as Senate Bill 1550 was proceeding through the legislative process, Governor Schwarzenegger indicated a preference for bureaus over boards, resulting in the bill’s late-session amendment. However, the Governor remained opposed to the so-called “reverse sunset” language that would transfer responsibility for the Act to the Advisory Committee upon the Bureau’s repeal. In his signing message for Senate Bill 1550, Governor Schwarzenegger stated:

“However, clean-up legislation will be necessary in the next legislative session because of the way the author structured the bill. This bill establishes an unnecessary and complicated mechanism of transferring the responsibilities and jurisdiction of the newly created Professional Fiduciaries Bureau (Bureau) to a newly created Professional Fiduciaries Advisory Committee, which would then be established as a board within the Department of Consumer Affairs, after July 1, 2011. The creation of this arrangement is not justified and will leave consumers and the general public more confused by this regulatory scheme. Moreover, there is no rational, analytical justification to assume that in five years the Bureau would even need to be reconstituted as a full board. I would rather have a future Legislature evaluate that need at the time of the sunset review, instead of establishing the presumption now.”

The Governor stated that he intended to seek legislative action in the following session to “clean up” the Act by removing the opposed language. However, no legislation was subsequently introduced to amend that code section, and the statute remains in effect. The question of whether to eliminate the “reverse sunset” clause was considered by the Senate Committee on Business, Professions, and Economic Development during the Bureau’s sunset review in 2011; in its formal response to the Senate Committee’s background paper, the Bureau recommended that the clause be eliminated, but this change was not included in the Bureau’s sunset extension vehicle.

While there have not been substantial reports of any confusion by the general public about the state’s regulatory scheme for professional fiduciaries due to the “reverse sunset” clause, its inclusion in the Act is an anomaly amongst other bureaus within the Department of Consumer Affairs. It is arguably not necessary to preserve the clause, especially considering there is no longer statute providing that a board’s authority would be transferred to another state agency upon its repeal. If it were determined that the Bureau was no longer the best agency to regulate licensed fiduciaries, the Legislature could then make the decision as to what entity, if any, should continue to carry out its responsibilities under the Act.

**Staff Recommendation:** *The Bureau should inform the Committees as to whether it still believes that the “reverse sunset” clause should be eliminated or if it has any other recommendations regarding this provision of law.*

**ISSUE #2:** *Advisory Committee Member Terms. Is the fact that all Advisory Committee members are currently scheduled to term out at the same time a cause for concern?*

**Background:** The Bureau has called attention to the fact that currently, all members appointed to its Advisory Committee are scheduled to term out on the same day. That date was January 1, 2023; however, statute allows for appointees to continue to serve a grace period for up to one year following the expiration of their term until a new member has been appointed. Therefore, the Advisory Committee’s appointing authorities (the Governor, the Speaker of the Assembly, and the Senate Rules Committee) have until January 1, 2024, to appoint an entirely new membership.

As the Bureau has pointed out, this alignment of the Advisory Committee’s term expirations is not fortuitous and potentially places a strain upon the appointing authorities to reconstitute the entire committee membership. Further, the Advisory Committee would immediately lose all institutional expertise upon the members’ departure. The Bureau has therefore suggested that the terms of three Advisory Committee members be temporarily set to two years each, instead of four, so as to stagger the terms. This is one potential solution to the issue, though others may be proposed.

**Staff Recommendation:** *The Bureau should explain what it believes to be the best solution to the Advisory Committee member term issue and provide any language it would recommend.*

**ISSUE #3:** *Disclosure of Sensitive Information. Should the Bureau continue to be required to publish potentially sensitive personal information in court documents on its website?*

**Background:** Statute requires the Bureau to publish information on its website regarding its licensees, including details relating to probate cases involving a professional fiduciary who has been removed or resigned. This information includes case names, locations, and case numbers that can be personally identifying for conservatees and other individuals. The Bureau is concerned that “this information can expose vulnerable people to serious consumer harm” and proposes narrowing statute to allow more limited disclosure of information relating to a professional fiduciary who has been removed or resigned in a matter.

**Staff Recommendation:** *The Bureau should provide the Committees with any proposed language to narrow disclosure of sensitive information and further elucidate its support for such language.*

**ISSUE #4:** *Information Technology. Are the Bureau’s current Information Technology options sufficient given that it was ultimately excluded from the BreEZe project?*

**Background:** The Bureau was one of 19 boards and bureaus previously scheduled to participate in Release 3 implementation of the BreEZe information technology system that ultimately were removed from the project. The Department of Consumer Affairs Office of Information Services (OIS) has since worked with those Release 3 entities to determine what business modernization opportunities are available to meet each entity’s technology needs. The Bureau has reported that while it has worked with OIS to identify internal software options to modernize business processes, these efforts have been put on hold due to a lack of financial resources as OIS continues to explore enterprise architecture solutions.

**Staff Recommendation:** *The Bureau should provide the Committees with updates regarding its current information technology capacity and whether continued delays in its business modernization efforts are contributing to any substantial issues with fulfilling its responsibilities under the Act.*

### **FISCAL ISSUES**

**ISSUE #5:** *Long-Term Financial Sustainability. Considering the Bureau’s comparatively small licensee population and its already high fees, do new mandates creating additional cost pressures further call into question the appropriateness of the Bureau as a standalone regulatory agency?*

**Background:** The question of whether the Bureau’s licensing population can support a sufficiently steady revenue stream to sustain it long-term has been posed since the earliest years of its existence. The background paper for the Bureau’s first sunset review in 2011 repeated contemporary assertions that “the Bureau struggled for viability, having a scarcity of licensees and minimal revenues.” Beginning in 2009, Governor Schwarzenegger’s proposed solution was to merge the Bureau with the California Board of Accountancy as part of his government reorganization plan. Both the Bureau and the Board of Accountancy opposed this proposal. The merger was rejected by the Senate Committee, which believed that it was premature to determine that the Bureau would not ultimately become reliably solvent.

However, the issue of whether the Bureau was sustainable as an independent regulatory agency was raised again during the Bureau’s next sunset review in 2014. The Committees discussed how even though the Bureau had repaid its loans and was actively enforcing the Act, its licensee population remained low and its recruitment and enforcement efforts were hindered by concerns over its fund condition. While prior proposals to consolidate the Bureau with another entity were again discussed, the Bureau was again provided with an extension of its current structure.

The Bureau’s 2018 sunset review background paper once again expressed concerns over the Bureau’s fund condition, noting that the Bureau’s licensing fees may be insufficient to provide for adequate financial reserves. To date, the Bureau’s annual licensing fee of \$700 has never been adjusted. This is in part due to concerns that increasing the already comparably high fee would be a further deterrent to more individuals seeking licensure, exacerbating existing problems stemming from the paucity of licensees under the Bureau.

In its sunset report to the Committees, the Bureau acknowledged the need to address long-term financial sustainability. The Bureau stated that there is new urgency around this topic due to the substantial fiscal impact associated with its implementation of Assembly Bill 1194. The Bureau also believes that its new retired and inactive license statuses may further result in a reduction of licensees. While the Bureau is concerned that an increase in its application and license fees will discourage new license applicants, it has stated that it will go insolvent by FY 2023-24 if additional revenue is not raised.

The above circumstances effectively leave the Legislature with two options: accept that the Bureau will have to raise fees, potentially worsening struggles with recruitment into the profession; or reconsider whether the Bureau’s responsibilities should be merged with another state agency. The latter option would not be effectuated without lengthy, transparent deliberation with the Administration and stakeholders regarding the various concerns that have historically been raised. However, all options must be preserved for consideration as the Bureau initiates the process for raising its fees, which would also be an unideal solution to its fiscal challenges.

**Staff Recommendation:** *The Bureau should provide an update on its fiscal challenges and inform the Committees of any perspectives on the feasibility or advisability of alternative solutions to increasing its license fees.*

**ISSUE #6:** *Statutory Fee Caps. Should the Act be amended to provide for a range or cap on the Bureau's fees?*

**Background:** For most entities under the Department of Consumer Affairs, the amounts charged to applicants and licensees in regulatory fees are either codified or statute provides for a range or ceiling for those fees, which can be adjusted up to a maximum amount through regulation. However, the Act allows the Bureau to simply set any fee through regulation "at an amount necessary to recover the reasonable costs to the bureau in carrying out those functions pursuant to this chapter." While the Bureau has never increased its license fees since establishing them at \$700, and while it appears that an increase may soon be appropriate to address the Bureau's fiscal challenges, the Legislature may nevertheless wish to provide some statutory maximum, consistent with other boards and bureaus.

**Staff Recommendation:** *The Committees should discuss the possibility of establishing maximum fee amounts that may be charged by the Bureau through regulation and the Bureau should provide input into what an appropriate maximum should be.*

## **LICENSING ISSUES**

**ISSUE #7:** *Former Licensees. Should the Bureau receive clearer authority to reinstate or deny reinstatement to former licensees?*

**Background:** The Act does not currently provide the Bureau with clear authority to reinstate or deny reinstatement to former licensees, under any circumstances. Statute prohibits the Bureau from renewing, restoring, or reinstating a license that has been canceled, but otherwise offers no criteria for determining if a former licensee warrants having their license restored. The Bureau states that it believes the Act should be amended to expressly authorize the Bureau to grant or deny a petition for reinstatement of a license, and to provide criteria for the Bureau to consider in determining whether the individual seeking reinstatement poses no discernable public harm and has sufficiently met certain requirements.

**Staff Recommendation:** *The Bureau should provide the Committees with recommended language relating to the reinstatement of licenses and further explain its support for such a proposal.*

**ISSUE #8:** *Non-Renewing Licensees. Should the Act be amended to require licensees who no longer plan to practice to notify the Bureau and provide final case closure information?*

**Background:** If a professional fiduciary does not renew their license with the Bureau, it may be because they no longer intend to work as a professional fiduciary. However, if a license is not renewed, the licensee may not report final case closures to the Bureau and the Bureau may seek disciplinary action under the assumption that the professional fiduciary is continuing to practice without an active license. The Bureau has proposed that licensees be required to provide notice that they no longer intend to practice, regardless of the licensee's status and provide a final annual statement to close out any remaining cases.

**Staff Recommendation:** *The Bureau should explain how it envisions the above notification requirement being implemented and provide any recommended language.*

### **EDUCATION AND EXAMINATION ISSUES**

**ISSUE #9:** *Cultural Competency Education. What is the status of the Bureau’s implementation of Assembly Bill 465 and have any compliance challenges been identified?*

**Background:** Assembly Bill 465 (Nazarian), chaptered in 2021, requires prelicense education courses for professional fiduciaries to include at least one hour of cultural competency courses and, as part of the approved continuing education courses for licensees, at least two hours of ethics for fiduciaries, two hours of instruction in cultural competency, or two hours of instruction in both ethics and cultural competency every year. The intention of the bill was to ensure that professional fiduciaries understand the unique needs of the LGBTQ+ community, particularly as those individuals become more representative of the state’s elderly. The bill was sponsored by Equality California.

Prior to the enactment of Assembly Bill 465, the Act did not specify any course content required for a professional fiduciary’s completion of their 30 hours of prelicense education or 15 annual hours of continuing education other than two hours of ethics coursework. The bill presumably impacts the Bureau’s enforcement program for the Act’s education requirements. Therefore, an update from the Bureau on its implementation of the bill would likely be of value.

**Staff Recommendation:** *The Bureau should provide the Committees with an update on its implementation of Assembly Bill 465 and whether it has encountered any issues.*

### **ENFORCEMENT ISSUES**

**ISSUE #10:** *Aiding Unlicensed Practice. Should the Bureau receive more explicit authority to discipline active licensees who aid and abet unlicensed individuals?*

**Background:** The Bureau has expressed concern that some individuals whose professional fiduciary license has been disciplined by the Bureau, either by revocation or stipulated surrender, simply transfer their cases to their business partners, employers, or coworkers who are actively licensed professional fiduciaries, thereby keeping access to their former clients/cases and the potential to continue working despite being unlicensed. While unlicensed practice itself is an enforceable offense, the Bureau does not have clear authority to discipline licensees who aid and abet it. The Bureau has proposed that the Act be amended to give the Bureau express authority to discipline licensees who aid and abet unlicensed individuals engaged in the practice of a professional fiduciary.

**Staff Recommendation:** *The Bureau should provide the Committees with additional information about cases where licensees aid and abet unlicensed practice and share any recommended amendments to the Act relating to this issue.*

**ISSUE #11: *Non-Cooperation with Investigations. How could the Bureau more effectively compel cooperation from licensees during investigations?***

**Background:** According to the Bureau, there have been instances where licensees have failed to cooperate with Bureau staff during investigations. The Bureau states that it lacks sufficient tools to compel compliance when licensees simply ignore the Bureau’s inquiries or provide incomplete information. The Bureau has proposed that the Act be amended to make failure to cooperate with an investigation an express form of unprofessional conduct.

**Staff Recommendation:** *The Bureau should provide examples of how a licensee may be determined to have failed to cooperate with an investigation and share any proposed legislative language.*

**ISSUE #12: *Unlicensed Activity. Should unlicensed activity be subjected to criminal liability?***

**Background:** Currently, the Bureau can impose an administrative citation and fine up to \$5,000 for unlicensed activity, but the Bureau has stated that unlicensed individuals simply ignore the citation. While other practice acts under the Business and Professions Code provide that unlicensed activity is punishable as a misdemeanor, this is not the case for the Act. The Bureau believes that in order to meaningfully pursue unlicensed activity outside of issuing administrative sanctions, the Act should be amended to criminalize unlicensed practice, consistent with other regulated professions.

**Staff Recommendation:** *The Bureau should further explain its current enforcement challenges with regards to unlicensed practice and provide the Committees with recommended language.*

**PRACTICE ISSUES**

**ISSUE #13: *Notification to Consumers. Should professional fiduciaries be required to notify their clients that they are licensed by the Bureau?***

**Background:** Section 138 of the Business and Professions Code requires boards and bureaus under the Department of Consumer Affairs to promulgate regulations to require its licensees to provide notice to their clients or customers that the practitioner is licensed by California. The Bureau has indicated that it has encountered challenges implementing this statute, as it lacks clear legislative guidance as to how to adopt regulations tailored for a professional fiduciary’s clients and relevant interested parties. The Bureau states that based on stakeholder input during the regulatory process, the text cannot be articulated clearly enough to identify which parties must receive a notice or without expanding the definition of “client” or “customer” used in Section 138.

Because often the “client” of a professional fiduciary is an individual with diminished capacity, the appropriate person to notify would be a family member or other third party. Professional fiduciaries also do not always work out of a brick-and-mortar office where a notice would be easily placed and read. Finally, the Bureau points out that professional fiduciaries do not customarily enter into conventional contracts for their services with their clients, but instead are “hired” to work for their clients via a legally binding document such as a trust, power of attorney document, court order or court appointment. Further statutory guidance as to how the Bureau should implement the notification requirement may be useful.



**Staff Recommendation:** *The Bureau should work with the Committees to determine how the statutory notice requirement should be implemented for professional fiduciaries and determine whether legislation is appropriate to codify this guidance.*

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**ISSUE #14:** *Use of Employees. Does statute need to be amended to clarify that professional fiduciaries may utilize and compensate the services of their employees without prior court approval?*

**Background:** Among its numerous provisions, Assembly Bill 1194 prohibited a guardian or conservator from hiring or referring any business to an entity in which the guardian or conservator or an employee has a financial interest. This provision was intended to address concerning circumstances relating to the Britney Spears conservatorship, as revealed in the *New York Times* documentaries. However, representatives of the profession have claimed that confusion has resulted from the way the statute was drafted, and that both courts and licensees have misinterpreted the statute to require a professional fiduciary to seek court approval prior to utilizing their staff to assist with the administration of a guardianship or conservatorship proceeding.

This perceived ambiguity has allegedly led professional fiduciaries, in an abundance of caution, to file otherwise unnecessary petitions with the court seeking authority to utilize the services of their staff or employees in the execution of their duties. Stakeholders have therefore asked that provisions in Assembly Bill 1194 be amended to clarify that a professional fiduciary may utilize the services of their employees and to seek compensation for their professional services as part of a fee request. This clarification may avoid the filing of extraneous petitions and relieve any burden to court calendars.

**Staff Recommendation:** *The Bureau should provide its perspective on the proposed amendment to Assembly 1194 and whether it believes such a change would merit consideration by the Committees.*

### **TECHNICAL CLEANUP**

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**ISSUE #15:** *Technical Cleanup. Is there a need for technical cleanup?*

**Background:** As the profession continues to evolve and new laws are enacted, many provisions of the Act have potentially become outmoded or superfluous.

**Staff Recommendation:** *The Bureau should recommend cleanup amendments for inclusion in its sunset bill.*

### **CONTINUED REGULATION OF PROFESSIONAL FIDUCIARIES BY THE PROFESSIONAL FIDUCIARIES BUREAU**

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**ISSUE #16:** *Continued Regulation. Should the licensing of professional fiduciaries be continued and be regulated by the Professional Fiduciaries Bureau?*

**Background:** As previously discussed, persistent questions remain unresolved regarding the Bureau's long-term sustainability as an independent regulatory agency. However, notwithstanding these logistical challenges, the argument for the Bureau continuing to license and regulate professional fiduciaries remains as cogent as it did decades ago when the Act was first introduced and signed by the Governor.

Therefore, if an extension of the Bureau as it currently exists as a licensing agency is ultimately deemed practicable for the near foreseeable future, then preserving that regulatory structure should likely be considered ideal. If the Committees do decide to initiate any discussions about the organizational structure of the Bureau and whether enforcement of the Act should be transferred to another entity, this discussion should be contextualized with preservation of the Bureau as the preferred option to the extent that it is feasible.

**Staff Recommendation:** *The Bureau should be continued, to be reviewed again on a future date to be determined.*