

## **TITLE 16. California Professional Fiduciaries Bureau Department of Consumer Affairs**

NOTICE IS HEREBY GIVEN that the Professional Fiduciaries Bureau (Bureau) of the Department of Consumer Affairs (Department) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, 1625 North Market Blvd., 2<sup>nd</sup> Floor, El Dorado Room – N-2020, Sacramento, California 95834 at 9 a.m., on Wednesday, April 8, 2020. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on Tuesday, April 7, 2020, or must be received by the Bureau at the hearing. The Bureau, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 481, 482, and 6517 of the Business and Professions Code (BPC), and to implement, interpret or make specific Sections 141, 475, 480, 481, 482, 488, 490, 492, 493, 6536, and 6537 of said Code, the Bureau is considering changes to Division 41 of Title 16 of the California Code of Regulations (CCR) as follows:

### INFORMATIVE DIGEST

#### A. Informative Digest

The Bureau is under the authority of the Department. The Bureau currently regulates a total of 1,090 licensed professional fiduciaries. The Bureau was created by legislation enacted in 2007 (SB 1550, Figueroa, Chapter 491, Statutes of 2006) to license and regulate non-family member professional fiduciaries. Professional Fiduciaries required to be licensed are conservators, guardians, personal representatives of decedent estates, trustees, and agents under durable power of attorney as defined by the Professional Fiduciaries Act (BPC section 6500 et seq.). Professional fiduciaries provide critical services to seniors, persons with disabilities, and children. They manage matters for clients including daily care, housing and medical needs, and offer financial management services ranging from basic bill paying to estate and investment management.

BPC section 6517 authorizes the Bureau to adopt, amend, or repeal, such rules and regulations as may be necessary to enable the Bureau to carry into effect the provisions of law relating to the Fiduciary Act. The primary purpose of the

proposal is to implement, interpret, and make specific BPC section 141, 475, 480, 481, 482, 488, 490, 492 and 493 relative to the substantial relationship criteria and rehabilitation criteria.

The Bureau is proposing the following changes:

- Amend section 4520 of Division 41 Title 16 of the California Code of Regulations. (Substantial Relationship Criteria)

The proposed regulation, for purposes of denial of a license, would add professional misconduct and out-of-state discipline as grounds requiring the Bureau to consider the substantially related criteria, and require the Bureau, in making the substantial relationship determination for a crime, to consider the following criteria: (1) the nature and gravity of the offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of a person holding the license. The proposal would also add that substantially related crimes, professional misconduct, or acts would include convictions for specified crimes.

- Adopt section 4521 of Division 41 of Title 16 of the California Code of Regulations. (Criteria to aid in determining if financial crimes are directly and adversely related to the fiduciary qualifications, functions, or duties of a Professional Fiduciary)

The proposed regulation, for purposes of denial of a license, would add a criteria to aid the Bureau in determining whether a financial crime is directly and adversely related to the fiduciary qualifications, functions, or duties of a Professional Fiduciary. That criteria includes: (1) whether the crime resulted in direct financial benefit to the applicant or another person, estate, or trust; or (2) direct financial harm to another person, estate, or trust. Also, this criteria would consider financial crimes to be directly and adversely related if they involve any of the following: (1) false, altered, forged, counterfeit, or fraudulent statements or documents; (2) stolen property, embezzlement, money laundering, fraud, theft, grand theft, larceny, burglary, identity theft, or obtaining money, labor, or property under false pretenses; and (3) attempt or conspiracy to commit those financial crimes.

- Amend section 4522 of Division 41 Title 16 of the California Code of Regulations. (Criteria for Rehabilitation)

Existing law, BPC sections 480, 481, and 482 respectively, require the Bureau to adopt regulations developing criteria to aid the Bureau when considering the denial of a license to determine whether a crime or act is substantially related to the qualifications, functions, or duties of a professional fiduciary. Additionally, the Bureau is required to develop criteria to evaluate the rehabilitation of an applicant or licensee when considering denial of a license. The proposed amendments will establish the rehabilitation criteria and require the Bureau to consider the nature

and gravity of the crime, the length of the applicable parole or probation periods, the extent which the applicable parole or probation period was shortened or lengthened, and the extent to which the terms of probation were modified and why. The proposal would require a broader set of rehabilitation criteria to be considered for applicants who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the denial was based on something other than a conviction.

- Amend section 4620 of Division 41 Title 16 of the California Code of Regulations. (Substantial Relationship Criteria)

The proposed regulation, for purposes of suspension, or revocation of a license, would add out-of-state discipline as grounds requiring the Bureau to consider the substantially related criteria, and require the Bureau, in making the substantial relationship determination for a crime, to consider the following criteria: (1) the nature and gravity of the offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of a person holding the license. The proposal would also add that substantially related crimes or acts would include convictions for specified crimes.

- Amend section 4622 of Division 41 Title 16 of the California Code of Regulations. (Criteria for Rehabilitation)

Existing law, BPC sections 481 and 482, respectively, require the Bureau to adopt regulations developing criteria to aid the Bureau when considering the suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of a professional fiduciary. Additionally, the Bureau is required to develop criteria to evaluate the rehabilitation of an applicant or licensee when considering the suspension or revocation of a license. The proposed amendments will establish the rehabilitation criteria and require the Bureau to consider the nature and gravity of the crime, the length of the applicable parole or probation periods, the extent which the applicable parole or probation period was shortened or lengthened, and the extent to which the terms of probation were modified and why. The proposal would require a broader set of rehabilitation criteria to be considered for applicants who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the discipline was based on something other than a conviction.

## B. Policy Statement Overview/Anticipated Benefits of Proposal

As specified in the legislative analyses of AB 2138, this proposal seeks to reduce barriers to licensure for individuals with prior criminal convictions, which may reduce recidivism and provide economic opportunity to California's residents. In addition, the proposal seeks to improve clarity, transparency, and consistency for

applicants and licensees in the Bureau's use of their criminal histories. Further, by reducing barriers to licensure, the Bureau anticipates benefits to consumers who may have greater access to licensed professionals.

C. Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the Bureau has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE N/A

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The Bureau does not anticipate an increased cost to the state as a result of amending and adopting the sections identified in the regulatory proposal.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact:

The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal would only affect the criteria used by the Bureau to determine if a license should be denied, suspended, or revoked.

The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

HOUSING COSTS: None

BUSINESS REPORTING REQUIREMENT: None

## EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations would not affect small businesses. This proposal would only affect the criteria used by the Bureau to determine if a license should be denied, suspended, or revoked.

## RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

### Impact on Jobs/Businesses:

The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. This proposal would only affect the criteria used by the Bureau to determine if a license should be denied, suspended, or revoked.

### Benefits of Regulation:

The Bureau has determined that this proposal may benefit individuals, who would have greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to licensed professionals, which may benefit the health and welfare of California's elderly population. Professional Fiduciary businesses may benefit as they would have a larger pool of licensed professionals from which to hire. The regulatory proposal does not affect worker safety or the state's environment.

## COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS:

The Bureau is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The following alternatives were considered:

- Option 1: To pursue a regulatory change that requires the Bureau to find rehabilitation if the applicant completed their terms of their criminal probation or parole. Courts give little weight to the fact that an applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole since they are under the direct supervision of correctional authorities and are required to behave in an exemplary fashion. As such, the Bureau believes that reviewing each individual on

the basis of multiple criteria is the better indicator whether individuals are rehabilitated and not a danger to the public's health, safety, and welfare. For these reasons, the Bureau rejected this option.

- Option 2: Do nothing, meaning the Bureau would not adopt the regulations. The Bureau opted not to pursue this option because per AB 2138, the Bureau is mandated to adopt proposed regulations by July 1, 2020.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

### INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, any document incorporated by reference, the initial statement of reasons, and all the information upon which the proposal is based, may be obtained upon request from the Professional Fiduciaries Bureau at 1625 N. Market Blvd., Suite 209, Sacramento, CA 95834, or by accessing the Bureau's website at [www.fiduciary.ca.gov](http://www.fiduciary.ca.gov).

### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

### CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Angela Cuadra, Program Analyst
Address:	1625 N. Market Blvd., Suite 209 Sacramento, CA 95834
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The backup contact person is:

Name: Rebecca May, Bureau Chief  
Address: 1625 N. Market Blvd., Suite 209  
Sacramento, CA 95834  
Telephone No.: (916) 574-7340  
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Website Access: Materials regarding this proposal can be found at  
[www.fiduciary.ca.gov](http://www.fiduciary.ca.gov).