

Senate Bill No. 204

Passed the Senate September 9, 2009

Secretary of the Senate

Passed the Assembly September 3, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 17600, 51003, 51005, and 51007 of, and to amend and repeal Section 17207 of, the Financial Code, relating to financial transactions.

LEGISLATIVE COUNSEL'S DIGEST

SB 204, Benoit. Financial transactions: escrow agents: exchange facilitators.

Existing law provides for the licensing and regulation of escrow agents by the Commissioner of Corporations. Existing law, until January 1, 2010, requires each escrow agent to pay an annual license fee of up to \$2,800 for each office or location and authorizes the commissioner to additionally levy a special assessment of up to \$500, which is required to be paid by the escrow agent within 30 days of receipt of notification by the commissioner, for each office or location in certain circumstances. Commencing January 1, 2010, existing law instead requires each escrow agent to pay to the commissioner the agent's pro rata share of the commissioner's annual administrative costs and expenses, as specified.

This bill would repeal the provisions that would require an escrow agent, commencing January 1, 2010, to pay to the commissioner the agent's pro rata share of the commissioner's annual administrative costs and expenses. The bill would, instead, continue the requirement for an escrow agent to pay an annual license fee of up to \$2,800 for each office or location. The bill would authorize the special assessment that may be levied by the commissioner to be in an amount of up to \$1,000 for each office or location. The bill would require an escrow agent to pay the special assessment within 60 days of notification by the commissioner.

Existing law provides that the license of an escrow agent remains in effect until surrendered, revoked, or suspended. Existing law sets forth the procedure for the surrender of the license of an escrow agent, and requires a surrendering licensee to, among other things, tender his or her license and all other indicia of licensure to the commissioner, and submit a closing audit to the commissioner, as specified. Existing law provides that a license is not surrendered

until the commissioner has reviewed and accepted the closing audit, made a determination that there is no violation of law, and, in writing, accepted tender of the license.

This bill would delete the requirement that the commissioner make a determination that there is no violation of law and instead require a determination that acceptance of the surrender is in the public interest.

Existing law requires a person engaging in business as an exchange facilitator, as defined, to comply with certain bonding and insurance requirements that may include, among other things, maintaining a fidelity bond or bond and a policy of errors and omissions insurance executed by an insurer authorized to do business in this state. Existing law authorizes a person to file a claim to recover damages on the bonds, deposits, or letters of credit maintained by an exchange facilitator for a failure to comply with the provisions regulating exchange facilitators.

This bill would authorize the fidelity bond or bonds and the policy of errors and omissions insurance maintained by an exchange facilitator to be executed by specified eligible surplus line insurers. The bill would require claims for damages to be subject to the terms and conditions of the bonds, deposits, or letters of credit maintained by an exchange facilitator and would provide that the amounts of those bonds, deposits, or letters of credit shall be reduced to the extent of any payment made.

The people of the State of California do enact as follows:

SECTION 1. Section 17207 of the Financial Code, as amended by Section 1 of Chapter 257 of the Statutes of 2005, is amended to read:

17207. The commissioner shall charge and collect the following fees and assessments:

(a) For filing an application for an escrow agent's license, six hundred twenty-five dollars (\$625) for the first office or location and four hundred twenty-five dollars (\$425) for each additional office or location.

(b) For filing an application for a duplicate of an escrow agent's license lost, stolen, or destroyed, or for replacement, upon a satisfactory showing of the loss, theft, destruction, or surrender of certificate for replacement, two dollars (\$2).

(c) For investigation services in connection with each application, one hundred dollars (\$100), and for investigation services in connection with each additional office application, one hundred dollars (\$100).

(d) For holding a hearing in connection with the application, as set forth under Section 17209.2, the actual costs experienced in each particular instance.

(e) (1) Each escrow agent shall pay to the commissioner for the support of this division for the ensuing year an annual license fee not to exceed two thousand eight hundred dollars (\$2,800) for each office or location.

(2) On or before May 30 in each year, the commissioner shall notify each escrow agent by mail of the amount of the annual license fee levied against it, and that the payment of the invoice is payable by the escrow agent within 30 days after receipt of notification by the commissioner.

(3) If payment is not made within 30 days, the commissioner may assess and collect a penalty, in addition to the annual license fee, of 10 percent of the fee for each month or part of a month that the payment is delayed or withheld.

(4) If an escrow agent fails to pay the amount due on or before the June 30 following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company.

(5) If, after an order is made pursuant to paragraph (4), a request for a hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a company shall not conduct business pursuant to this division, except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

(f) Fifty dollars (\$50) for investigation services in connection with each application for qualification of any person under Section 17200.8, other than investigation services under subdivision (c) of this section.

(g) A fee not to exceed twenty-five dollars (\$25) for the filing of a notice or report required by rules adopted pursuant to subdivision (a) or Section 17203.1.

(h) (1) If costs and expenses associated with the enforcement of this division, including overhead, are or will be incurred by the commissioner during the year for which the annual license fee is levied, and that will or could result in the commissioner's incurring of costs and expenses, including overhead, in excess of the costs and expenses, including overhead, budgeted for expenditure for the year in which the annual license fee is levied, then the commissioner may levy a special assessment on each escrow agent for each office or location in an amount estimated to pay for the actual costs and expenses associated with the enforcement of this division, including overhead, in an amount not to exceed one thousand dollars (\$1,000) for each office or location. The commissioner shall notify each escrow agent by mail of the amount of the special assessment levied against it, and that payment of the special assessment is payable by the escrow agent within 60 days of receipt of notification by the commissioner. The funds received from the special assessment shall be deposited into the State Corporations Fund and shall be used only for the purposes for which the special assessment is made.

(2) If payment is not made within 60 days, the commissioner may assess and collect a penalty, in addition to the special assessment, of 10 percent of the special assessment for each month or part of a month that the payment is delayed or withheld. If an escrow agent fails to pay the special assessment on or before 60 days following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company. If an order is made under this subdivision, the provisions of paragraph (5) of subdivision (e) shall apply.

(3) If the amount collected pursuant to this subdivision exceeds the actual costs and expenses, including overhead, incurred in the administration and enforcement of this division and any deficit incurred, the excess shall be credited to each escrow agent on a pro rata basis.

SEC. 2. Section 17207 of the Financial Code, as amended by Section 2 of Chapter 257 of the Statutes of 2005, is repealed.

SEC. 3. Section 17600 of the Financial Code is amended to read:

17600. (a) An escrow agent's license remains in effect until surrendered, revoked, or suspended.

(b) A licensee that ceases to engage in the business regulated by this division and desires to no longer be licensed shall notify the commissioner in writing and, at that time, tender the license and all other indicia of licensure to the commissioner. Within 105 days of the written notice to the commissioner, the licensee shall submit to the commissioner, at its own expense, a closing audit report as of the date the license is tendered to the commissioner for surrender, or for another period as the commissioner may specify, to be performed by an independent certified public accountant. The closing audit shall include, but not be limited to, information required by the commissioner, a bank reconciliation of the trust account, and a verified statement from a certified public accountant confirming lawful disbursement of funds. A license is not surrendered until the commissioner has reviewed and accepted the closing audit report, a determination has been made by the commissioner that acceptance of the surrender is in the public interest, and tender of the license is accepted in writing by the commissioner.

SEC. 4. Section 51003 of the Financial Code is amended to read:

51003. (a) A person who engages in business as an exchange facilitator shall at all times comply with one or more of the following:

(1) Maintain a fidelity bond or bonds in an amount not less than one million dollars (\$1,000,000), executed by an insurer authorized to do business in this state or an eligible surplus line insurer that is on the list of eligible surplus line insurers maintained by the Insurance Commissioner pursuant to subdivision (f) of Section 1765.1 of the Insurance Code.

(2) Deposit an amount of cash or securities or irrevocable letters of credit in an amount not less than one million dollars (\$1,000,000) in an interest-bearing deposit account or a money market account with the financial institution of the person's choice. Interest on that amount shall accrue to the exchange facilitator.

(3) Deposit all exchange funds in a qualified escrow account or qualified trust, as those terms are defined under Treasury Regulation 1.1031(k)-1(g)(3), with a financial institution and provide that any withdrawals from that escrow account or trust require that person's and the client's written authorization.

(b) A person who engages in business as an exchange facilitator may maintain a bond or bonds or deposit an amount of cash or securities or irrevocable letters of credit in excess of the minimum required amounts.

(c) If the person engaging in business as an exchange facilitator is listed as a named insured on one or more fidelity bonds that total at least one million dollars (\$1,000,000), the requirements of this section shall be deemed satisfied.

SEC. 5. Section 51005 of the Financial Code is amended to read:

51005. Any person claiming to have sustained damage by reason of the failure of a person engaging in business as an exchange facilitator to comply with this division may file a claim on the bonds, deposits, or letters of credit described in Section 51003 to recover the damages subject to the terms and conditions of the bonds, deposits, or letters of credit. The amounts of the bonds, deposits, or letters of credit shall be reduced to the extent of any payment made.

SEC. 6. Section 51007 of the Financial Code is amended to read:

51007. (a) A person who engages in business as an exchange facilitator shall at all times comply with either of the following:

(1) Maintain a policy of errors and omissions insurance in an amount not less than two hundred fifty thousand dollars (\$250,000), executed by an insurer authorized to do business in this state or an eligible surplus line insurer that is on the list of eligible surplus line insurers maintained by the Insurance Commissioner pursuant to subdivision (f) of Section 1765.1 of the Insurance Code.

(2) Deposit an amount of cash or securities or irrevocable letters of credit in an amount not less than two hundred fifty thousand dollars (\$250,000) in an interest-bearing deposit account or a money market account with the financial institution of the person's choice. Interest on that amount shall accrue to the exchange facilitator.

(b) A person who engages in business as an exchange facilitator may maintain insurance or deposit an amount of cash or securities or irrevocable letters of credit in excess of the minimum required amounts.

(c) If the person engaging in business as an exchange facilitator is listed as a named insured on an errors and omissions policy of

at least two hundred fifty thousand dollars (\$250,000), the requirements of this section shall be deemed satisfied.

Approved _____, 2009

Governor