

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1885

Introduced by Assembly Member Waldron

February 11, 2016

An act to amend Section ~~12340.1~~ 12389 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1885, as amended, Waldron. ~~Title insurance.~~ *Title and escrow services: authorization to transact business.*

Existing law authorizes a company that is a stock corporation to engage in the business of preparing title searches, title reports, title examinations, or certificates or abstracts of title, and to conduct escrow services, if the company, among other things, furnishes audits to the Insurance Commissioner annually on or before March 31, or, if approved in writing by the commissioner, on a fiscal year basis on or before 90 days after the end of the fiscal year. Existing law authorizes the commissioner to extend that deadline, for good cause shown, for a period not to exceed 60 days.

This bill would extend the maximum amount of time permitted for an extension of the deadline to submit an audit to 90 days.

~~Under existing law, title insurance is defined as insuring, guaranteeing, or indemnifying an owner of real or personal property or the holder of liens or encumbrances or others who have interests in the property against loss or damage due to liens, encumbrances, or defects in the title to the insured property, defects in liens or encumbrances, or defects in title searches.~~

~~This bill would make technical, nonsubstantive changes to those provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 12389 of the Insurance Code, as added
2 by Section 3 of Chapter 370 of the Statutes of 2015, is amended
3 to read:

4 12389. (a) On and after July 1, 2016, an underwritten title
5 company as defined in Section 12340.5 that is a stock corporation
6 may, subject to subdivision (b), (1) engage in the business of
7 preparing title searches, title reports, title examinations, or
8 certificates or abstracts of title, upon the basis of which a title
9 insurer writes title policies, and (2) conduct escrow services
10 through business locations, as defined in Section 12340.13, in
11 counties in which the underwritten title company is licensed to
12 conduct escrow services regardless of the location of the real or
13 personal property involved in the transaction.

14 (b) (1) Only a domestic corporation may be licensed under this
15 section and no underwritten title company, as defined in Section
16 12340.5, may become licensed under this section, or change the
17 name under which it is licensed or operates, unless it has first
18 complied with Section 881.

19 (2) (A) Depending upon the county or counties in which the
20 company is licensed to transact business, it shall maintain required
21 minimum net worth and a bond or cash deposit as follows:

22			
23	Aggregate number of documents		
24	recorded and documents filed in the		
25	preceding calendar year in all counties		
26	where the company is licensed to transact		
27	business		
28			
29	Number of documents	Amount of	Amount of bond
30		required	or
31		minimum net	cash deposit
32		worth	
33	Less than 50,000.....	\$ 75,000	\$ 50,000

1	50,000 to 100,000.....	120,000	50,000
2	100,000 to 500,000.....	200,000	100,000
3	500,000 to 1,000,000.....	300,000	100,000
4	1,000,000 or more.....	400,000	100,000

5

6 (B) “Net worth” for the purposes of this section is defined as
7 the excess of assets over all liabilities and required reserves. The
8 company may carry as an asset the actual cost of its title plant,
9 provided the value ascribed to that asset shall not exceed the
10 aggregate value of all other assets.

11 (C) If a title plant of an underwritten title company is not
12 currently maintained, the asset value of the plant shall not exceed
13 its asset value as determined in the preceding paragraph as of the
14 date to which that plant is currently maintained, less one-tenth
15 thereof for each succeeding year or part of the succeeding year
16 that the plant is not being currently maintained. For the purposes
17 of this section, a title plant shall be deemed currently maintained
18 so long as it is used in the normal conduct of the business of title
19 insurance, and (i) the owner of the plant continues regularly to
20 obtain and index title record data to the plant or to a continuation
21 thereof in a format other than that previously used, including, but
22 not limited to, computerization of the data, or (ii) the owner of the
23 plant is a participant, in an arrangement for joint use of a title plant
24 system regularly maintained in any format, provided the owner is
25 contractually entitled to receive a copy of the title record data
26 contained in the jointly used title plant system during the period
27 of the owner’s participation therein, either periodically or upon
28 termination of that participation, at a cost not to exceed the actual
29 cost of duplication of the title record data.

30 (D) An underwritten title company shall at all times maintain
31 current assets of at least ten thousand dollars (\$10,000) in excess
32 of its current liabilities, as current assets and liabilities may be
33 defined pursuant to regulations made by the commissioner. In
34 making the regulations, the commissioner shall be guided by
35 generally accepted accounting principles followed by certified
36 public accountants in this state.

37 (3) (A) An underwritten title company shall obtain from the
38 commissioner a license to transact its business. The license shall
39 not be granted until the applicant conforms to the requirements of
40 this section and all other provisions of this code specifically

1 applicable to the applicant. After issuance the holder of the license
 2 shall continue to comply with the requirements as to its business
 3 set forth in this code, in the applicable rules and regulations of the
 4 commissioner, and in the laws of this state.

5 (B) An underwritten title company that possesses, or is required
 6 to possess, a license pursuant to this section shall be subject as if
 7 an insurer to the provisions of Article 8 (commencing with Section
 8 820) of Chapter 1 of Part 2 of Division 1 of this code and is deemed
 9 to be subject to authorization by the Insurance Commissioner
 10 within the meaning of subdivision (e) of Section 25100 of the
 11 Corporations Code.

12 (C) The license may be obtained by filing an application on a
 13 form prescribed by the commissioner accompanied by a filing fee
 14 of three hundred fifty-four dollars (\$354). The license when issued
 15 shall be for an indefinite term and shall expire with the termination
 16 of the existence of the holder, subject to the annual renewal fee
 17 imposed under Sections 12415 and 12416.

18 (D) An underwritten title company seeking to extend its license
 19 to an additional county shall pay a two-hundred-seven-dollar (\$207)
 20 fee for each additional county, and shall furnish to the
 21 commissioner evidence, at least sufficient to meet the minimum
 22 net worth requirements of paragraph (2), of its financial ability to
 23 expand its business operation to include the additional county or
 24 counties.

25 (4) (A) An underwritten title company shall furnish an audit to
 26 the commissioner on the forms provided by the commissioner
 27 annually, either on a calendar year basis on or before March 31
 28 or, if approved in writing by the commissioner in respect to any
 29 individual company, on a fiscal year basis on or before 90 days
 30 after the end of the fiscal year. The time for furnishing any audit
 31 required by this paragraph may be extended, for good cause shown,
 32 on written approval of the commissioner for a period, not to exceed
 33 ~~60~~ 90 days. Failure to submit an audit on time, or within the
 34 extended time that the commissioner may grant, is grounds for an
 35 order by the commissioner to accept no new business pursuant to
 36 subdivision (d). The audits shall be private, except that a synopsis
 37 of the balance sheet on a form prescribed by the commissioner
 38 may be made available to the public.

39 (B) The audits shall be made in accordance with generally
 40 accepted auditing standards by an independent certified public

1 accountant or independent licensed public accountant whose
2 certification or license is in good standing at the time of the
3 preparation. The fee for filing the audit shall be three hundred
4 thirteen dollars (\$313).

5 (C) The commissioner may refuse to accept an audit or order a
6 new audit for any of the following reasons:

7 (i) An adverse result in any proceeding before the California
8 Board of Accountancy affecting the auditor's license.

9 (ii) The auditor has an affiliation with the underwritten title
10 company or any of its officers or directors that would prevent his
11 or her reports on the company from being reasonably objective.

12 (iii) The auditor has been convicted of a misdemeanor or felony
13 based on his or her activities as an accountant.

14 (iv) A judgment adverse to the auditor in any civil action finding
15 him or her guilty of fraud, deceit, or misrepresentation in the
16 practice of his or her profession.

17 (D) A company that fails to file an audit or other report on or
18 before the date it is due shall pay to the commissioner a penalty
19 fee of one hundred eighteen dollars (\$118) and on failure to pay
20 that or another fee or file the audit required by this section shall
21 forfeit the privilege of accepting new business until the delinquency
22 is corrected.

23 (c) An underwritten title company may engage in the escrow
24 business and act as escrow agent, provided that:

25 (1) It maintains a record of all receipts and disbursements of
26 escrow funds.

27 (2) (A) It maintains a bond satisfactory to the commissioner in
28 the amount set forth in subparagraph (A) of paragraph (2) of
29 subdivision (b) of this section. The bond shall run to the state for
30 the use of the state, and for any person who has cause against the
31 obligor of the bond or under the provisions of this chapter.

32 (B) (i) In lieu of the bond described in subparagraph (A), the
33 company shall maintain a deposit in the amount set forth in
34 subparagraph (A) of paragraph (2) of subdivision (b) of this section,
35 and in a form permitted by Section 12351, with the commissioner,
36 who shall immediately make a special deposit in that amount in
37 the State Treasury. The deposit shall be subject to Sections 12353,
38 12356, 12357, and 12358. As long as there are no claims against
39 the deposit, all interest and dividends thereon shall be paid to the
40 depositor. The deposit shall be security for the same beneficiaries

1 and purposes as the bond, as set forth in subparagraph (A) and in
2 paragraph (3) of this subdivision. The deposit shall be maintained
3 until four years after all escrows handled by the depositor have
4 been closed.

5 (ii) The commissioner may release the deposit prior to the
6 passage of the four-year period described in clause (i) upon
7 presentation of evidence satisfactory to the commissioner of either
8 a statutory merger of the depositor into a licensee subject to the
9 jurisdiction of the commissioner, or a valid assumption agreement
10 under which the liability of the depositor stemming from escrow
11 transactions handled by it is assumed by a licensee subject to the
12 jurisdiction of the commissioner.

13 (iii) With the foregoing exceptions, the deposit shall be returned
14 to the depositor or lawful successor in interest following the
15 four-year period described in clause (i) upon presentation of
16 evidence satisfactory to the commissioner that there are no claims
17 against the deposit arising out of escrow transactions handled by
18 the depositor. If claims against the deposit are presented to the
19 commissioner, the commissioner may pay a valid claim or claims
20 until the deposit amount is exhausted. If the commissioner has
21 evidence of one or more claims against the depositor, and the
22 depositor is in conservatorship, bankruptcy, or liquidation
23 proceedings, the commissioner may release the deposit to the
24 conservator, trustee, or liquidator. If the depositor is not in
25 conservatorship, bankruptcy or liquidation, the commissioner may
26 interplead the deposit by special endorsement to a court of
27 competent jurisdiction for distribution to claimants on the deposit.

28 (3) (A) The bond provided by a surety insurer naming the
29 underwritten title company as principal obligor or the letter of
30 credit of an issuing bank shall be subject to the following
31 conditions:

32 (i) The licensee shall faithfully conform to and abide by the
33 provisions of this chapter and all of the rules made by the
34 commissioner under this chapter concerning the conduct of escrow
35 services.

36 (ii) The licensee will honestly and faithfully apply all funds
37 received, and will faithfully and honestly perform all obligations
38 and undertakings under this chapter, concerning the conduct of
39 escrow services.

1 (B) In determining the liability of the principal and the sureties
2 under the bond, any money recovered to restore any deficiency in
3 the trust shall not be considered as an asset of the liquidation
4 subject to the assessment for the cost of the liquidation.

5 (C) The surety under the bond, or the issuing bank of a letter of
6 credit, may pay the full amount of its liability thereunder to the
7 commissioner as conservator, liquidator, receiver, or anyone
8 appointed by the commissioner as a conservator, liquidator, or
9 receiver in lieu of payment to the state or persons having a cause
10 of action against the principal of a bond or applicant under a letter
11 of credit, and upon such payment the surety on the bond, or the
12 issuing bank under a letter of credit shall be completely released,
13 discharged, and exonerated from further liability under the bond
14 or letter of credit, as applicable. The conservator, liquidator, or
15 receiver may use the proceeds of the bond, or letter of credit, for
16 any purposes, including the funding of the costs of conservatorship,
17 receivership, or liquidation.

18 (D) If there is no reasonable or adequate admitted market for
19 surety bonds as required by this section, the commissioner may
20 act pursuant to Section 1763.1 or, for good cause shown, may
21 permit a letter of credit in lieu thereof, and in the amount of the
22 bond or deposit required by this section. In that case, the
23 commissioner may fashion the letter of credit requirements as
24 appropriate to the circumstances and cause.

25 (4) On and after July 1, 2016, the commissioner shall promptly
26 release to the depositor, upon application, all escrow-related
27 deposits previously made pursuant to paragraph (2) of subdivision
28 (c) of former Section 12389 if any of the following occurs:

29 (A) The underwritten title company has provided to the
30 commissioner bond coverage, a deposit, or an approved irrevocable
31 letter of credit as set forth in this subdivision.

32 (B) Upon presentation of evidence satisfactory to the
33 commissioner of either a statutory merger of the underwritten title
34 company depositor into a licensee or certificate holder subject to
35 the jurisdiction of the commissioner, or a valid assumption
36 agreement under which all liability of the depositor stemming from
37 escrow transactions handled by it is assumed by a licensee or
38 certificate holder subject to the jurisdiction of the commissioner.

39 (5) Otherwise the deposit shall be promptly returned to the
40 depositor, its duly appointed trustee in bankruptcy or lawful

1 successor in interest upon application for release following the
2 four-year period specified in paragraph (2), as that paragraph read
3 on June 30, 2016, unless the commissioner has received claims
4 against the deposit stemming from escrow transactions handled
5 by the depositor. If the commissioner has received one or more
6 claims against the depositor, and the depositor is not in
7 conservatorship, bankruptcy, or liquidation, the commissioner may
8 interplead the deposit by special endorsement to a court of
9 competent jurisdiction for distribution on the basis that claims
10 against the depositor stemming from escrow transactions handled
11 by the depositor have priority in the distribution over other claims
12 against the depositor.

13 (d) The commissioner shall, whenever it appears necessary,
14 examine the business and affairs of a company licensed under this
15 section. The examination shall be at the expense of the company.

16 (e) (1) At any time that the commissioner determines, after
17 notice and hearing, that a company licensed under this section has
18 willfully failed to comply with a provision of this section, the
19 commissioner shall make his or her order prohibiting the company
20 from conducting its business for a period of not more than one
21 year.

22 (2) A company that violates the commissioner's order is subject
23 to seizure under Article 14 (commencing with Section 1010) of
24 Chapter 1 of Part 2 of Division 1, is guilty of a misdemeanor, and
25 may have its license revoked by the commissioner. Any person
26 aiding and abetting any company in a violation of the
27 commissioner's order is guilty of a misdemeanor.

28 (f) The purpose of this section is to maintain the solvency of
29 the companies subject to this section and to protect the public by
30 preventing fraud and requiring fair dealing. In order to carry out
31 these purposes, the commissioner may make reasonable rules and
32 regulations to govern the conduct of its business of companies
33 subject to this section. The rules and regulations shall be adopted,
34 amended, or repealed in accordance with the procedures provided
35 in Chapter 3.5 (commencing with Section 11340) of Part 1 of
36 Division 3 of Title 2 of the Government Code.

37 (g) The name under which each underwritten title company is
38 licensed shall at all times be an approved name. The fee for filing
39 an application for a change of name shall be one hundred eighteen
40 dollars (\$118). Each company shall be subject to the provisions

1 of Article 14 (commencing with Section 1010) and Article 14.5
2 (commencing with Section 1065.1) of Chapter 1 of Part 2 of
3 Division 1.

4 (h) This section does not prohibit an underwritten title company
5 from engaging in escrow, settlement, or closing activities on
6 properties located outside this state if those activities do not violate
7 the laws of that other state or country.

8 (i) This section is operative on July 1, 2016.

9 ~~SECTION 1. Section 12340.1 of the Insurance Code is~~
10 ~~amended to read:~~

11 ~~12340.1. "Title insurance" means insuring, guaranteeing or~~
12 ~~indemnifying owners of real or personal property or the holders~~
13 ~~of liens or encumbrances thereon or others interested therein against~~
14 ~~loss or damage suffered by reason of:~~

15 ~~(a) Liens or encumbrances on, or defects in the title to the~~
16 ~~property;~~

17 ~~(b) Invalidity or unenforceability of any liens or encumbrances~~
18 ~~on the property; or~~

19 ~~(c) Incorrectness of searches relating to the title to real or~~
20 ~~personal property.~~