

**Introduced by Senators Vidak and Block
(Coauthor: Senator Morrell)**

February 27, 2015

An act to amend Sections 17202 and 17310 of, and to add Section 17665 to, the Financial Code, relating to escrow agents, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 736, as introduced, Vidak. Escrow agents: loss of trust fund obligations.

The Escrow Law requires the licensing of escrow agents by the Commissioner of Business Oversight, and further requires licensees to participate as members of the Escrow Agents' Fidelity Corporation, a nonprofit corporation established to pay members for loss of trust fund obligations, as specified. The law requires a licensed escrow agent to maintain a bond based on the previous year's average annual trust fund obligations, as specified.

This bill would authorize the commissioner to increase the minimum bond required of an escrow agent by up to 100% of its face value if the commissioner reasonably believes, based on an examination, that conservation or liquidation of that escrow agent may become necessary for the protection of the public. This bill would make findings and declarations regarding the role of Fidelity Corporation to support and enhance preservation of the public's trust in licensed escrow agents, and specify that Fidelity Corporation is required to indemnify a member escrow agent against loss in accordance with the Escrow Law. This bill would also state the intent of the Legislature for the commissioner to utilize the services of 3rd parties who are independent of the department to perform conservation, liquidation, and receiver functions, and would

require the full amount of any penalty revenue, as specified, to be available for use by the commissioner to compensate a conservator, liquidator, or receiver. By making this penalty revenue available to the commissioner in this regard, this bill would make an appropriation.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Section 17202 of the Financial Code is amended
2 to read:
3 17202. ~~(a)~~—At the time of filing an application for an escrow
4 agent’s license, the applicant shall deposit with the commissioner
5 a bond satisfactory to the commissioner in the amount of at least
6 twenty-five thousand dollars (\$25,000). Thereafter, a licensee shall
7 maintain a bond satisfactory to the commissioner in the amount
8 of: (1) twenty-five thousand dollars (\$25,000) if 150 percent of
9 the previous year’s average annual trust fund obligations, as
10 calculated under Section 17348, equals two hundred fifty thousand
11 dollars (\$250,000) or less; (2) thirty-five thousand dollars (\$35,000)
12 if 150 percent of the previous year’s average annual trust fund
13 obligations, as calculated under Section 17348, equals at least two
14 hundred fifty thousand one dollars (\$250,001) but not more than
15 five hundred thousand dollars (\$500,000); or (3) fifty thousand
16 dollars (\$50,000) if 150 percent of the previous year’s average
17 annual trust fund obligations, as calculated under Section 17348,
18 equals five hundred thousand one dollars (\$500,001) or more. *The*
19 *commissioner may increase the minimum bond required of an*
20 *escrow agent by up to 100 percent of its face value if the*
21 *commissioner reasonably believes, based on an examination*
22 *conducted pursuant to Section 17405, that conservation or*
23 *liquidation of that escrow agent may become necessary for the*
24 *protection of the public.* The bond shall run to the state for the
25 use of the state and for any person who has cause against the
26 obligor of the bond under the provision of this division. A deposit
27 given instead of the bond required by this section shall not be
28 deemed an asset of the applicant or licensee for the purpose of
29 complying with Section 17210. An applicant or licensee may obtain
30 an irrevocable letter of credit approved by the commissioner in
31 lieu of the bond.

1 ~~(b) Escrow agents licensed prior to January 1, 1986, shall~~
2 ~~comply with the requirements of subdivision (a) on or before July~~
3 ~~1, 1986.~~

4 SEC. 2. Section 17310 of the Financial Code is amended to
5 read:

6 17310. (a) ~~It shall be the purpose of Fidelity~~ *The Legislature*
7 *finds and declares that persons who entrust their money to escrow*
8 *agents licensed under this division are entitled to full compensation*
9 *for any loss of trust fund moneys they experience due to loss, theft,*
10 *or misappropriation by a licensed escrow agent. It is the intent of*
11 *the Legislature that Fidelity Corporation undertake its*
12 *responsibilities under this division in a manner that supports and*
13 *enhances preservation of the public's trust in licensed escrow*
14 *agents.*

15 ~~(b) Fidelity Corporation to~~ *shall* indemnify a member within
16 the State of California against loss, subject to the limitations set
17 forth in this chapter.

18 ~~(b)~~

19 (c) Fidelity Corporation shall not be liable for any consequential
20 damages sustained by a member, or by any other person, nor for
21 any punitive damages whatsoever.

22 ~~(e)~~

23 (d) The indemnification shall be provided by any of the
24 following:

25 (1) A fund established by Fidelity Corporation pursuant to
26 Section 17320.

27 (2) A fidelity bond or insurance policy to be approved by the
28 commissioner.

29 (3) A combination of paragraphs (1) and (2) subject, however,
30 to the maximum coverage specified in subdivision (b) of Section
31 17314.

32 ~~(d)~~

33 (e) Fidelity Corporation shall provide a copy to all of its
34 members and the commissioner of the fidelity bond or insurance
35 policy as it is acquired or renewed, and Fidelity Corporation shall
36 promptly provide a copy to any member or successor in interest,
37 upon request.

38 SEC. 3. Section 17665 is added to the Financial Code, to read:

39 17665. (a) The full amount of any penalty revenue collected
40 from persons who are found to have violated any provision of this

1 division shall be available for use by the commissioner to
2 compensate a conservator appointed pursuant to Section 17630, a
3 liquidator appointed pursuant to Section 17635, or a receiver
4 pursuant to Section 17636.

5 (b) It is the intent of the Legislature that the commissioner utilize
6 the services of third parties who are independent of the department
7 to perform conservation, liquidation, and receiver functions, when
8 possible.