

AMENDED IN SENATE MAY 5, 2015

SENATE BILL

No. 736

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

February 27, 2015

An act to amend Sections ~~17202 and 17310~~ 17310, 17630, 17635, and 17636 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 amended, Vidak. Escrow ~~agents: loss of trust fund obligations:~~ *agents*.

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 is in accordance with the Escrow Law. This~~ *The* bill would ~~also~~ state the intent of the Legislature for the

commissioner to utilize the services of *private 3rd-parties parties, with prior escrow or escrow conservation, liquidation, or receivership experience*, who are independent of the department to perform conservation, liquidation, and receiver functions, and would require the full amount of any penalty revenue, *up to \$125,000 at any one time*, as specified, to be available for use by the commissioner to compensate ~~a~~ *an appointed conservator, liquidator, or receiver. The bill would also authorize the commissioner to utilize all or a portion of the bond or other required obligations, and all or a portion of a licensee’s assets remaining following conservation, liquidation, or receivership to compensate an appointed conservator, liquidator, or receiver.* By making this penalty revenue *and other 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. ~~At the time of filing an application for an escrow agent’s~~
 4 ~~license, the applicant shall deposit with the commissioner a bond~~
 5 ~~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~~

1 liquidation of that escrow agent may become necessary for the
2 protection of the public. The bond shall run to the state for the use
3 of the state and for any person who has cause against the obligor
4 of the bond under the provision of this division. A deposit given
5 instead of the bond required by this section shall not be deemed
6 an asset of the applicant or licensee for the purpose of complying
7 with Section 17210. An applicant or licensee may obtain an
8 irrevocable letter of credit approved by the commissioner in lieu
9 of the bond.

10 ~~SEC. 2.~~

11 *SECTION 1.* Section 17310 of the Financial Code is amended
12 to read:

13 17310. (a) ~~The Legislature finds and declares that persons~~
14 ~~who entrust their money to escrow agents licensed under this~~
15 ~~division are entitled to full compensation for any loss of trust fund~~
16 ~~moneys they experience due to loss, theft, or misappropriation by~~
17 ~~a licensed escrow agent. It is the intent of the Legislature that~~
18 Fidelity Corporation undertake its responsibilities under this
19 division in a manner that supports and enhances ~~preservation of~~
20 ~~the public's~~ trust in licensed escrow agents.

21 (b) Fidelity Corporation shall indemnify a member within the
22 State of California against loss, subject to the limitations set forth
23 in this chapter.

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

27 (d) The indemnification shall be provided by any of the
28 following:

29 (1) A fund established by Fidelity Corporation pursuant to
30 Section 17320.

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

33 (3) A combination of paragraphs (1) and (2) subject, however,
34 to the maximum coverage specified in subdivision (b) of Section
35 17314.

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

1 *SEC. 2. Section 17630 of the Financial Code is amended to*
2 *read:*

3 17630. (a) If any facts occur ~~which~~ *that* would entitle the
4 commissioner under Section 17621 to take possession of the
5 property, ~~business business~~, and assets of a ~~licensee licensee~~, the
6 commissioner may appoint a conservator of a licensee and require
7 of him ~~such or her a~~ bond as the commissioner deems proper. The
8 commissioner may also, upon the request of the board of directors
9 of a licensee, appoint a conservator of ~~such the~~ licensee and require
10 of him ~~such or her a~~ bond as the commissioner deems proper. The
11 conservator, under the direction of the commissioner, shall take
12 possession of the property, ~~business business~~, and assets of the
13 licensee and take ~~such the~~ action as he *or she* may deem necessary
14 to conserve the assets of ~~such the~~ licensee pending further
15 disposition of its business. The conservator shall retain ~~such the~~
16 possession until the property, ~~business business~~, and assets of the
17 licensee are returned to the licensee or until further order of the
18 commissioner.

19 (b) *Whenever possible, the commissioner shall utilize the*
20 *services of one or more qualified private individuals with prior*
21 *escrow or escrow conservation experience to act as conservator.*

22 *SEC. 3. Section 17635 of the Financial Code is amended to*
23 *read:*

24 17635. (a) If at any time after taking possession of the property
25 and business of a licensee it shall appear to the commissioner that
26 it would be futile to proceed as conservator with the conduct of
27 the business of ~~such the~~ person he *or she* may apply to the superior
28 court of the county in which is located the principal office of ~~such~~
29 *the* person in this ~~State state~~ for an order to liquidate and wind up
30 the business of ~~said that~~ person. Upon a full hearing of ~~such an~~
31 application, the court may make an order directing the winding up
32 and liquidation of the business of ~~such the~~ person by the
33 commissioner, as liquidator.

34 (b) *If the commissioner appoints a representative to act on his*
35 *or her behalf as a liquidator, the commissioner shall, whenever*
36 *possible, utilize the services of one or more qualified private*
37 *individuals with prior escrow or escrow liquidation experience to*
38 *act in this capacity.*

39 *SEC. 4. Section 17636 of the Financial Code is amended to*
40 *read:*

1 17636. (a) Whenever the commissioner has taken possession
2 of the property and business of a licensee he *or she* may petition
3 the superior court for the appointment of a receiver to liquidate
4 the affairs of the licensee.

5 (b) *Whenever possible, the commissioner shall utilize the*
6 *services of one or more qualified private individuals with prior*
7 *escrow or escrow receivership experience to act as receiver.*

8 ~~SEC. 3.~~

9 SEC. 5. Section 17665 is added to the Financial Code, to read:

10 17665. (a) ~~The~~*Except as provided in subdivision (b), the full*
11 *amount of any penalty revenue collected from persons who are*
12 *found to have violated any provision of this division shall be*
13 *available for use by the commissioner to compensate a conservator*
14 *appointed pursuant to Section 17630, a liquidator appointed*
15 *pursuant to Section 17635, or a receiver appointed pursuant to*
16 *Section 17636.*

17 (b) *The maximum amount of penalty revenue available for use*
18 *by the commissioner at any one time to compensate conservators,*
19 *liquidators, or receivers shall not exceed one hundred twenty-five*
20 *thousand dollars (\$125,000). Any amounts above one hundred*
21 *twenty-five thousand dollars (\$125,000) shall revert to the General*
22 *Fund.*

23 (c) *The commissioner may utilize all or a portion of the bond*
24 *or other obligations required pursuant to Section 17202, and all*
25 *or a portion of a licensee's assets remaining following*
26 *conservation, liquidation, or receivership to compensate*
27 *conservators, liquidators, or receivers.*

28 ~~(b)~~

29 (d) It is the intent of the Legislature that the commissioner utilize
30 the services of *private* third parties *with prior escrow or escrow*
31 *conservation, liquidation, or receivership experience*, who are
32 independent of the department to perform conservation, liquidation,
33 and receiver functions, ~~when~~ *whenever possible.*