

Assembly Bill No. 2436

CHAPTER 1010

An act to amend Sections 17321, 17331, and 17331.1 of the Financial Code, relating to escrow agents.

[Approved by Governor September 27, 1996. Filed
with Secretary of State September 29, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2436, Boland. Escrow Agents Fidelity Corporation.

Existing law provides that Fidelity Corporation shall bill and collect from each member an annual premium.

This bill would require every member as of March 31, to pay the assessment, without pro rata adjustment, notwithstanding that the member may have surrendered a license or had a license revoked prior to the date that the assessment is mailed.

Existing law provides that Escrow Agents' Fidelity Corporation Certificates shall be held by a member for the benefit of an employee, but not issued personally to the employee, and returned to the corporation by the member upon termination of an employee or upon demand by the corporation.

This bill would delete those requirements.

Existing law requires the certificate form to contain a provision for arbitration for any appeal or dispute as to any decision by the corporation concerning the certificate, as specified.

This bill would delete that requirement. It would also revise and recast certain notification requirements as to the certificate, as specified.

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

SECTION 1. Section 17321 of the Financial Code is amended to read:

17321. Fidelity Corporation shall bill and collect from each member an annual premium which in the aggregate shall consist of assessments for the operations fund and the fidelity fund.

(a) The annual assessment for the operations fund shall be assessed no later than October 15 of each year for the current fiscal year in accordance with subdivision (b) of Section 17320. The payment of any invoice for assessments under this subdivision is payable by the member escrow agent in three equal and consecutive monthly installments with the first installment payable at or within 30 days after receipt of the Fidelity Corporation invoice. The assessment shall include:

(1) All costs and expenses of administration as budgeted by the board of directors for the current fiscal year.

(2) Any expenses actually incurred in the preceding fiscal year which exceeded the budgeted costs of expenses and administration except for expenses recovered pursuant to subdivision (a) of Section 17321.1.

Each member's assessment shall be determined pro rata based upon the ratio of each member's licensed locations to the total licensed locations of all members as of the preceding June 30.

Members licensed on or after July 1 of each year shall be assessed only for costs and expenses pursuant to paragraph (1) of this subdivision. This assessment shall be prorated on a monthly basis.

(b) The annual assessment for the fidelity fund shall be assessed no later than May 1. The assessment shall be calculated as follows:

(1) If the membership fund and fidelity fund in the aggregate equal an amount less than five million dollars (\$5,000,000), then the assessment shall be the greater of: (A) one million dollars (\$1,000,000); or (B) the sum of (i) the greater of an amount necessary to bring the membership fund and fidelity fund in the aggregate up to five million dollars (\$5,000,000) or the total of all claims paid during the preceding fiscal year (except to the extent of any special assessment made pursuant to subdivision (b) of Section 17321.1) plus (ii) the greater of four hundred thousand dollars (\$400,000) or 0.045 percent of the total average trust obligations of all members as reflected in the most recent report required by Section 17348.

(2) If the membership fund and fidelity fund in the aggregate equal an amount that is at least five million dollars (\$5,000,000) but less than 1 percent of the total average trust obligations for all members as reflected in the most recent report required by Section 17348 or the fidelity fund equals an amount less than five million dollars (\$5,000,000), then the assessment shall be: (A) an amount equal to the total of all claims paid during the preceding fiscal year (except to the extent of any special assessment made pursuant to subdivision (b) of Section 17321.1); and (B) an amount which is the greater of four hundred thousand dollars (\$400,000) or 0.045 percent of the total average trust obligations of all members as reflected in the most recent report required by Section 17348.

(3) If the membership fund and fidelity fund in the aggregate equal 1 percent of the total average trust obligations of all members as reflected in the most recent report required by Section 17348 and the fidelity fund equals at least five million dollars (\$5,000,000), then the assessment shall be an amount equal to the actuarial projection of losses for the forthcoming fiscal year.

Each member's fidelity fund assessment for paragraphs (1), (2), and (3) shall be the amount derived by multiplying the amount to be assessed by the ratio that each member's risk factors bear to the total of all members' risk factors.



A member's risk factors shall be computed in accordance with the following formula, except that the total factors of a member shall be reduced by one for each licensed branch location:

Coverage per Licensed Location	Factors
\$1,000,000	3
\$2,000,000	5
\$3,000,000	7
\$4,000,000	8
\$5,000,000	9

(c) Notwithstanding subdivision (b), the assessment for the fidelity fund for the fiscal year beginning July 1, 1989, shall be made immediately upon 90-day notice of cancellation of the fidelity bond or insurance policy permitted by paragraph (2) of subdivision (c) of Section 17310, but in no event later than 60 days prior to the date of cancellation.

(d) Every licensed member as of March 31 shall pay the fidelity fund assessment, without any pro rata adjustment, notwithstanding that the member may have surrendered a license or have a license revoked prior to the date that the assessment is mailed.

SEC. 2. Section 17331 of the Financial Code is amended to read:

17331. (a) Within 30 days following written notice by Fidelity Corporation to an escrow agent any shareholder, officer, director, trustee, manager, or employee of an escrow agent, directly or indirectly compensated by an escrow agent within this state, shall be required to apply for a Fidelity Corporation Certificate, prepared and issued by Fidelity Corporation, as a condition of their employment or entitlement to compensation, before the person may continue the regular discharge of their duties, or have access to moneys or negotiable securities belonging to or in the possession of the escrow agent, or draw checks upon the escrow agent or the trust funds of the escrow agent.

(b) Within 60 days of the effective date of this section, each member shall provide Fidelity Corporation with a list of all shareholders, officers, directors, trustees, managers, and employees or other persons, on the form prescribed by Fidelity Corporation.

(c) Fidelity Corporation Certificates may also be known as Escrow Agents' Fidelity Corporation Certificates or EAFC Certificates. The certificate shall at all times remain the property of Fidelity Corporation, and is not transferable by either a member or employee. The certificate shall not be deemed to be, or construed as, a warranty or guarantee by Fidelity Corporation of the integrity, veracity, or competence of the person.



(d) An application for a Fidelity Corporation Certificate shall be in writing and in such form as prescribed by Fidelity Corporation, and may include (1) a fee not to exceed fifty dollars (\$50), (2) two passport-size photographs, and (3) a set of fingerprints on the form established by the Department of Justice for requesting state summary criminal history information plus the fee charged by the Department of Justice for processing noncriminal applicant fingerprints. The Department of Justice shall honor the Fidelity Corporation report request form and issue a report to Fidelity Corporation notwithstanding any other provision of law or regulation to the contrary. Fidelity Corporation shall also be entitled to submit a set of fingerprints on the specified noncriminal applicant fingerprint form for the purpose of requesting and obtaining a report from the Department of Justice, for the officers and employees of Fidelity Corporation. Any member shall cause the filing of applications for all existing employees as required by this section within 30 days of written notice by Fidelity Corporation to the member.

(e) The application form shall include a provision for binding arbitration to allow for arbitration of any appeal or dispute as to any decision by Fidelity Corporation concerning the certificate, as follows:

ANY DISPUTE AS TO WHETHER THE DENIAL OF THIS CERTIFICATE APPLICATION IS UNNECESSARY OR UNAUTHORIZED OR WAS IMPROPERLY, NEGLIGENTLY, OR UNLAWFULLY RENDERED, MAY BE DETERMINED BY SUBMISSION TO ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND NOT BY A LAWSUIT OR RESORT TO COURT PROCESS EXCEPT AS CALIFORNIA LAW PROVIDES FOR JUDICIAL REVIEW OF ARBITRATION PROCEEDINGS OR EXCEPT AS PROVIDED BY SECTION 17331.3 OF THE FINANCIAL CODE. THE APPLICANT MAY, SUBJECT TO AGREEMENT, SUBMIT ANY ISSUE ARISING FROM ANY DECISION BY FIDELITY CORPORATION TO DENY THIS CERTIFICATE APPLICATION TO BE DECIDED BY BINDING NEUTRAL ARBITRATION. UPON SUCH AGREEMENT, THE APPLICANT HAS NO RIGHTS TO HAVE ANY DISPUTE CONCERNING THIS CERTIFICATE APPLICATION LITIGATED IN A COURT OR JURY TRIAL NOR ANY JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, EXCEPT AS SPECIFICALLY PROVIDED IN THE ESCROW LAW, AND ARBITRATION MAY BE COMPELLED AS PROVIDED BY LAW.

(f) There shall be no liability on the part of and no cause of action of any nature shall arise against Fidelity Corporation or its members, directors, officers, employees, or agents, the State of California, the



Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations for any statements made by Fidelity Corporation in any reports or recommendations made pursuant to this division, or for any reports or recommendations made pursuant to this division to Fidelity Corporation by its members, directors, officers, employees or agents, the State of California, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations, unless the information provided is false and the party making the statement or providing the false information does so with knowledge and malice. Reports or recommendations made pursuant to this section, or Section 17331.1, 17331.2, or 17331.3 shall not be public documents.

(g) There shall be no liability on the part of and no cause of action of any nature shall arise against Fidelity Corporation or its members, directors, officers, employees, or agents, the State of California, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations for the release of any information furnished to Fidelity Corporation pursuant to this section unless the information released is false and the party, including Fidelity Corporation, its members, directors, officers, employees, or agents, the state, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations, who releases the false information does so with knowledge and malice.

(h) There shall be no liability on the part of and no cause of action of any nature shall arise against Fidelity Corporation or its directors, officers, employees, or agents, for any decision to deny an application for a certificate or to suspend or revoke the certificate of any person or for the timing of any decision or the timing of any notice to persons or members thereof, or for any failure to deny an application under subdivision (a) of Section 17331.2. This subdivision does not apply to acts performed in bad faith or with malice.

(i) Fidelity Corporation, any member of Fidelity Corporation, an agent of Fidelity Corporation or of its members, or any person who uses any information obtained under this section for any purpose not authorized by this chapter is guilty of a misdemeanor.

(j) Section 17331, 17331.1, or 17331.2 shall not constitute a restriction or limitation upon the obligation of Fidelity Corporation to indemnify members against loss, as provided in Sections 17310 and 17314. The failure to obtain a certificate, the denial of an application for a certificate, or the suspension, cancellation, or revocation of a certificate shall not limit the obligation of Fidelity Corporation to indemnify a member against loss.

(k) As of January 1, 1992, notwithstanding Section 11105 of the Penal Code, Fidelity Corporation shall be entitled to receive state summary criminal history information and subsequent arrest notification from the Department of Justice as a result of fingerprint



cards submitted to the Department of Justice by the Department of Corporations, pursuant to subdivision (g) of Section 17209, Section 17212.1, and subdivision (d) of Section 17414.1, by or on behalf of escrow agents, shareholders, officers, directors, trustees, managers, or employees of an escrow agent, directly or indirectly compensated by an escrow agent. The Department of Justice and Fidelity Corporation shall enter into an agreement to implement this subdivision. The Department of Corporations shall forward to Fidelity Corporation, weekly, a list of names of individual fingerprints submitted to the Department of Justice.

SEC. 3. Section 17331.1 of the Financial Code is amended to read:

17331.1. (a) As of January 1, 1992, any person not previously issued a certificate must, upon employment with an escrow agent within this state, apply to Fidelity Corporation for a certificate within 10 business days. The person may continue employment until or unless denied a certificate by Fidelity Corporation. The member shall submit all applications for certificates to Fidelity Corporation within 10 business days of the date of employment.

(b) Upon written notice by Fidelity Corporation to any or all members that any person has been denied a certificate, or has had a certificate suspended, canceled, or revoked, no member or person acting on behalf of a member shall authorize that person to have access to money or negotiable securities belonging to or in the possession of the escrow agent, or to draw checks upon the escrow agent or the trust accounts of the escrow agent. Any member or person who commits or who causes a violation of this section, which violation was either known or should have been known by the member or such persons committing or causing the violation, may be subject to action by the commissioner and Fidelity Corporation as provided for in this division.

(c) Each member and each person required to have a certificate shall comply with the Fidelity Corporation rules, to be approved by the commissioner, concerning the manner and timing within which Fidelity Corporation shall receive notice of employment, change of the person's name, mailing address, or employment status, the certificate form, and the procedures for the administration thereof. Fidelity Corporation may collect a fee to cover the cost of processing the notices but no fee shall exceed twenty-five dollars (\$25).

(d) Fidelity Corporation shall assess the member a penalty at the rate of twenty-five dollars (\$25) for every day that the member has not fully complied with this section, Section 17331, or Section 17331.2.

(e) Any member that suffers a loss of trust obligations caused by any person who is required to have a certificate but has (1) failed to apply for a certificate, (2) has had the application for a certificate denied, (3) has a suspended certificate, or (4) whose certificate has been revoked shall be obligated to pay a deductible in the amount of ten thousand dollars (\$10,000) plus 10 percent of the amount by



which the loss exceeds ten thousand dollars (\$10,000), notwithstanding the statutory deductible as prescribed by Section 17314.3. Other than as provided for in this subdivision, the failure to obtain a certificate, the denial of an application for a certificate, or the suspension, cancellation, or revocation of a certificate shall not limit the obligation of Fidelity Corporation to indemnify a member against loss of trust obligations as defined in this division.

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