

AMENDED IN ASSEMBLY JANUARY 5, 1998

AMENDED IN ASSEMBLY MAY 8, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 333**

**Introduced by Assembly Member Figueroa**

February 18, 1997

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An act to amend ~~Sections 1631 and 1635~~ *Section 1734.5* of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 333, as amended, Figueroa. Insurance: ~~agents~~ *fiduciary funds*.

*Existing law requires that fiduciary funds received by licensed insurance agents be maintained in a trustee bank account or securities issued by or backed by the United States or in certificates of deposit of banks or savings and loan associations licensed by any state government or by the United States.*

*This bill would add state and local bonds and short-term notes that are rated by Moody's Investor Service, Inc., or Standard and Poor's Corporation, as specified, to the list of permissible repositories for fiduciary funds.*

~~Existing law requires persons acting as insurance agents, brokers, or other production agencies, to be licensed by the Department of Insurance, except that certain persons are exempt from this requirement.~~

~~This bill would require persons who take an application for, solicit, sell, negotiate, interpret, procure, or place for others any kind of insurance to be licensed unless they are exempt from the licensure requirements. This bill would revise the applicable exemptions.~~

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 1631 of the Insurance Code is~~  
2     SECTION 1. *Section 1734.5 of the Insurance Code is*  
3     *amended to read:*  
4     1734.5. (a) If fiduciary funds, as defined in Section  
5     1733, are received by any person licensed, whether under  
6     a permanent license, restricted license, temporary  
7     license, or certificate of convenience, to act in any of the  
8     capacities specified in Section 1733, and the funds are not  
9     remitted, or maintained pursuant to subdivisions (a) and  
10    (b) of Section 1734, the funds shall be maintained as  
11    follows: (1) in United States government bonds and  
12    treasury certificates or other obligations for which the full  
13    faith and credit of the United States are pledged for  
14    payment of principal and interest; (2) in certificates of  
15    deposit of banks or savings and loan associations licensed  
16    by any state government within the United States, or the  
17    United States government; ~~or~~ (3) in repurchase  
18    agreements collateralized by securities issued by the  
19    United States government; *or (4) obligations issued by*  
20    *the State of California and its political subdivisions,*  
21    *agencies, and instrumentalities, or authorities, including*  
22    *general obligation bonds, revenue bonds, and short-term*  
23    *notes, with maturities or put options of not more than one*  
24    *year, and rated at least Aa1, MIG-1/VMIG-1 or Prime-1 by*  
25    *Moody's Investor Service, Inc., or AA, SP-1 or A-1 by*  
26    *Standard and Poor's Corporation.*  
27    (b) As a condition to maintaining the fiduciary funds  
28    pursuant to this section, a written agreement shall be  
29    obtained from each and every insurer or person entitled



1 thereto authorizing the maintenance and the retention of  
2 any earnings accruing on the funds.

3 (c) Evidence of the funds shall be maintained on  
4 California business by a bank as defined in Section 102 of  
5 the Financial Code, or by a savings and loan association  
6 as defined in Section 5057 or 11000 of the Financial Code  
7 in a custodian or trust account in California separate from  
8 any other funds, in an amount at least equal to the  
9 premiums and return premiums, net of commissions  
10 received by him or her and unpaid to the persons entitled  
11 thereto, or, at their discretion or pursuant to a written  
12 contract, for the account of these persons. However, the  
13 persons may commingle with the fiduciary funds any  
14 additional funds as he or she may deem prudent for the  
15 purpose of advancing premiums, establishing reserves for  
16 the paying of return premiums, or for any contingencies  
17 as may arise in his or her business of receiving and  
18 transmitting premium or return premium funds.

19 (d) The commissioner shall not have jurisdiction over  
20 any disputes arising between parties concerning the  
21 maintenance of fiduciary funds pursuant to this section.  
22 However, this subdivision shall not otherwise affect the  
23 authority granted to the commissioner over fiduciary  
24 funds by other provisions of this code, or regulations  
25 adopted pursuant thereto. As used in this subdivision, the  
26 term “parties” shall not include the commissioner.

27 ~~amended to read:~~

28 ~~1631. Unless exempt by the provisions of this article,~~  
29 ~~a person shall not take an application for, solicit, sell,~~  
30 ~~negotiate, interpret, procure, or place for others any kind~~  
31 ~~of insurance unless that person holds a valid license from~~  
32 ~~the commissioner authorizing that person to act in any of~~  
33 ~~the capacities defined in Article 1 (commencing with~~  
34 ~~Section 1621).~~

35 ~~SEC. 2. Section 1635 of the Insurance Code is~~  
36 ~~amended to read:~~

37 ~~1635. No license is required under the provisions of~~  
38 ~~this chapter for a person to act in the following capacities~~  
39 ~~or to engage in the following activities, providing no~~



- 1 ~~commission is paid or allowed, directly or indirectly, for~~  
2 ~~acting in those capacities or engaging in those activities:~~
- 3 ~~(a) The business of examining, certifying or~~  
4 ~~abstracting titles to real property.~~
- 5 ~~(b) The solicitation for membership in a fraternal~~  
6 ~~benefit society and other activities to the extent and as~~  
7 ~~described in Sections 11013 and 11102 of this code.~~
- 8 ~~(c) Salaried employees rendering solely clerical and~~  
9 ~~administrative services in the office of the employer.~~
- 10 ~~(d) Salaried administrative, clerical, or service~~  
11 ~~employees of insurers, reciprocal or inter insurance~~  
12 ~~exchanges, agents, and brokers performing any functions~~  
13 ~~in the office and under the supervision of a licensed~~  
14 ~~person as long as their activities do not include the~~  
15 ~~solicitation, sale, negotiation, interpretation,~~  
16 ~~procurement, or placement of insurance.~~
- 17 ~~(e) Salaried employees of insurers, or of organizations~~  
18 ~~employed by insurers engaged in inspecting, rating or~~  
19 ~~classifying risks or in general supervision of agents so long~~  
20 ~~as they are not individually engaged in the activities set~~  
21 ~~forth in Section 1631, except in connection with the~~  
22 ~~business of a fire and casualty licensee or life agent under~~  
23 ~~this chapter.~~
- 24 ~~(f) Any regularly salaried officer or employee of an~~  
25 ~~insurer or of an association of insurers engaged in their~~  
26 ~~usual and customary executive duties, including~~  
27 ~~providing direct technical advice and assistance to a~~  
28 ~~licensed person, or while performing duties and~~  
29 ~~exercising functions performed by a special agent or~~  
30 ~~agency supervisor as long as they are not individually~~  
31 ~~engaged in the activities set forth in Section 1631, except~~  
32 ~~in connection with the business of a fire and casualty~~  
33 ~~licensee or a life agent under this chapter.~~
- 34 ~~(g) The completion or delivery of a declaration or~~  
35 ~~certificate of coverage under a running inland marine~~  
36 ~~insurance contract evidencing coverage thereunder and~~  
37 ~~including only those negotiations as are necessary to the~~  
38 ~~completion or delivery if the person performing those~~  
39 ~~acts or his or her employer has an insurable interest in the~~  
40 ~~risk covered by the certificate or declaration.~~



1 ~~(h) The solicitation, negotiation or effectuation of~~  
2 ~~home protection contracts by a person licensed pursuant~~  
3 ~~to Part 1 (commencing with Section 10000) of Division 4~~  
4 ~~of the Business and Professions Code in connection with~~  
5 ~~his or her licensed function authorized by Section 10131~~  
6 ~~or 10131.6 of the Business and Professions Code. Neither~~  
7 ~~the receipt of a payment permitted by Section 12760 nor~~  
8 ~~the receipt of a benefit permitted by Section 12765 shall~~  
9 ~~disqualify the recipient from the licensing exemption~~  
10 ~~provided by this chapter.~~

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