

Date of Hearing: June 20, 2022

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

SB 1348 (Bradford) – As Amended April 7, 2022

**SENATE VOTE:** 32-2

**SUBJECT:** Escrow agents: controlled substances

**SUMMARY:** Removes offenses involving controlled substances from the list of crimes requiring the denial of a license under Escrow Law.

Specifically, **this bill:**

- 1) Removes an offense involving controlled substances from the list of offenses that disqualify a person from serving in any capacity as an officer, director, stockholder, trustee, agent, or employee of an escrow agent, or in any position involving any duties with an escrow agent.
- 2) Makes other assorted technical changes.

**EXISTING LAW:**

- 1) Provides for the Escrow Law (Financial Code Section 17000 et seq.), administered by the Department of Financial Protection and Innovation (DFPI).
- 2) Prohibits a person from engaging in business as an escrow agent in California except by means of a corporation duly organized for that purpose, licensed by DFPI as an escrow agent (Financial Code Section 17200).
- 3) Prohibits a person from serving in any capacity as an officer, director, stockholder, trustee, agent, or employee of an escrow agent, or in any position involving any duties with an escrow agent, if that person has been convicted or pleaded nolo contendere to specified crimes in the past ten years or has been held liable in any civil action by final judgment or any administrative judgment by any public agency within the past seven years. Specified crimes include, among others, offenses involving robbery, burglary, theft, embezzlement, fraud, fraudulent conversion or misappropriation of property, forgery, bookmaking, receiving stolen property, counterfeiting, controlled substances, extortion, checks, credit cards, or computer violations specified in Section 502 of the Penal Code. (Financial Code Section 17414.1)

**FISCAL EFFECT:** Unknown. This bill is keyed Fiscal by Legislative Counsel.

**COMMENTS:**

- 1) **Purpose.**

According to the author:

SB 1348 would remove offenses involving controlled substances from the list of crimes requiring automatic license denial under escrow laws administered by the Department of Financial Protection and Innovation. These changes would balance consumer protection with California's goal to allow former offenders to achieve meaningful employment.

## 2) **Background.**

DFPI licenses and regulates a variety of financial services and professionals, including independent escrow agents. The purpose of California's Escrow Law is to protect members of the public who entrust their money or other assets to independent escrow agents. Escrow Law prohibits a person from receiving an escrow license if that person has committed specified crimes, such as robbery, burglary, theft, forgery, counterfeiting, controlled substance, and extortion.

Many of the specified offenses identified in Escrow Law prohibiting licensure are tied directly to the qualifications or duties of an escrow agent. Because escrow agents play a critical role in effecting high-value transactions, such as the sale of real estate, offenses involving dishonesty and fraud are highly relevant, though it is worth revisiting the specific merits of any listed offense, such as offenses related to controlled substances, in evaluating an applicant's suitability.

Which offenses matter to the duties of an escrow agent is more than a theoretical debate. Applicants are routinely denied licensure because of prior records, including for drug offenses. According to data provided by the author's office, DFPI received 2,648 escrow employment applications in 2020-21 and denied 17 due to applicants' prior criminal history. Of those 17 denials, seven applications were denied due to criminal histories related to controlled substances.

## 3) **Rethinking the role of prior drug offenses**

There has been a significant rethinking at both the federal and state level about whether prior offenses should determine future job prospects. Today, an estimated 70 million to 100 million Americans now have some type of criminal record, and policymakers and researchers have paid considerable attention to the economic and financial impact of these criminal records. The Brennan Center estimates that the formerly incarcerated see their future earning reduced by an average of 53%, and in the aggregate, these lost wages exceed \$372 billion each year.

Communities of color are especially affected by the longstanding linkage between prior convictions and future economic opportunity. As a report by the Center for American Progress argues, "decades of biased policing and charging have resulted in people of color disproportionately bearing the brunt of mass incarceration and overcriminalization in the United States, and likewise, the criminal records crisis has also exacerbated stark levels of racial inequality."<sup>1</sup>

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<sup>1</sup> <https://www.americanprogress.org/article/criminal-record-shouldnt-life-sentence-poverty-2/>

The unequal enforcement of drug-related crimes in particular has helped fuel racial inequality. According to the Hamilton Project, Black and White Americans use and sell drugs at similar rates, yet Black Americans are 2.7 times more likely to be arrested for drug-related offenses and 6.5 times more likely to be incarcerated.<sup>2</sup> These disparities are driven by discrimination at multiple stages of the criminal legal system, including higher likelihoods of being stopped, searched, arrested, convicted, and harshly sentenced if you are a person of color.<sup>3</sup>

**REGISTERED SUPPORT / OPPOSITION:****Support**

None on file.

**Opposition**

None on file.

**Analysis Prepared by:** Luke Reidenbach / B. & F. / (916) 319-3081

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<sup>2</sup>[https://www.hamiltonproject.org/charts/rates\\_of\\_drug\\_use\\_and\\_sales\\_by\\_race\\_rates\\_of\\_drug\\_related\\_criminal\\_justice](https://www.hamiltonproject.org/charts/rates_of_drug_use_and_sales_by_race_rates_of_drug_related_criminal_justice)

<sup>3</sup> <https://drugpolicy.org/issues/race-and-drug-war>