

Date of Hearing: June 26, 2023

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

SB 484 (Newman) – As Amended March 30, 2023

**As Proposed to be Amended**

**SENATE VOTE:** 40-0

**SUBJECT:** Escrow agents: customer contact centers

**SUMMARY:** Authorizes a licensed escrow agent to designate an employee to work remotely as long as the licensed agent complies with specified privacy, record-keeping, and consumer safety requirements. Specifically, **this bill:**

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- 1) Defines “remote location” as a personal residence or a temporary, nonpublic location that is not simultaneously physically accessible by anyone other than an employee and the employee’s immediate family.
- 2) Authorizes a licensed escrow agent to designate an employee, when acting within the scope of employment, to perform work on the licensee’s behalf at a remote location if the licensed escrow agent does the following:
  - a) Prohibits in-person consumer interactions at a remote location and does not designate nor advertise a remote location to the public as a business location.
  - b) Prohibits books and records, as determined by the department, from being physically stored at a remote location except for storage on an encrypted device or encrypted media.
  - c) Prohibits a consumer’s personal information from being physically stored at a remote location except for storage on an encrypted device or encrypted media.
  - d) Provides an employee working at a remote location with the appropriate equipment, which may include encrypted devices, virtual private networks, and similar technology, to perform the work and safeguard licensee records and consumer personal information.
  - e) Adopts and adheres to appropriate, as determined by the Department of Financial Protection and Innovation (DFPI), written policies and procedures to supervise the work of employees at remote locations.

**EXISTING LAW:**

- 1) Provides the Escrow Law and requires the DFPI to administer a licensing program for and conduct oversight of escrow agents. (Division 6 of the Financial Code, Section 17000 et seq.)
- 2) Defines “escrow” as a transaction in which one person, for the purpose of effecting the transfer of property to another person, delivers money or a thing of value to a third person to

be held by that third person until the happening of a specified event or the performance of a prescribed condition, as specified. (Financial Code Section 17003)

- 3) Defines “escrow agent” as any person engaged in the business of receiving escrows for deposit or delivery. (Financial Code Section 17004)
- 4) Defines “Internet escrow agent” as any person engaged in the business of receiving escrows for deposit or delivery over the Internet. (Financial Code Section 17004.5)
- 5) Defines “business location” as a facility or other place of business where a person engages in the business of receiving an escrow for deposit or delivery, but does not include a customer contact center. (Financial Code Section 17005.2)
- 6) Defines “customer contact center” as a facility operated by an Internet escrow agent that exists solely for the purpose of responding to customer electronic messages and telephone inquiries; provided, that no receipt or disbursements relating to an escrow are made from the facility; and provided further, that any documentation or other material generated, transmitted, or otherwise sent from the facility can be reviewed at any time from the business location of the Internet escrow agent. (Financial Code Section 17005.3)

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

**COMMENTS:**

1) Purpose

According to the author:

This bill will ensure that escrow agents can continue to work while maintaining all other protocols and safeguards pertaining to this important market function.

2) COVID-19 and remote work in financial services

The COVID-19 pandemic led to the rapid adoption of remote work across the United States. While the share of workers who telework has gradually been increasing over the last few decades, mandatory stay-at-home orders from state and local officials pushed many professionals into permanent or part-time teleworking.

At the start of the pandemic, California took action to provide worksite flexibility to some of its financial services licensees. In March 2020, the Business, Consumer Services, and Housing Agency (BCSH) and DFPI issued emergency guidance that granted certain licensees, including finance lenders and servicers, escrow agents, student loan servicers, and residential mortgage lenders and servicers, additional flexibility around remote work. The guidance stated that DFPI would not take enforcement action against licensees operating unlicensed branches to the extent that, during the state of emergency, employees conduct activities provided that appropriate measures are taken to protect consumers and their state.

Following the success of the Newsom Administration’s temporary emergency measures, the Legislature passed 2001 (Grayson), Chapter 181, Statutes of 2022, to allow for permanent worksite flexibility for companies licensed under the California Financing Law, provided the licensees met certain conditions and complied with specified consumer protections.

AB 2001 did not apply to every licensee that received a temporary reprieve under the Newsom Administration's temporary COVID-19 measures. AB 2001 focused only on CFL licensees and was the product of significant discussions between stakeholders, legislators, and DFPI.

3) Escrow agents.

Escrow agents play an important and trusted role in some of the most complex and high value financial transactions in consumers' lives, such as real estate transactions. Escrow agents serve as neutral third parties who manage legal documents and funds that change hands between buyers, sellers, lenders, and borrowers once all conditions of a contract have been satisfied. The Escrow Law protects members of the public who entrust their money or other assets to independent escrow agents in California.

According to data provided by the author's office, as of May 2021, there were 340,170 registered escrow agents (also known as loan officers) in the United States. In California, there were 37,120 escrow agents. The escrow industry is majority female, with 58.8% of escrow agents being women as of 2022.

4) Proposed amendments.

As drafted, SB 484 may not allow for significant new remote work opportunities for escrow agents. Following discussions with the author about the goals of SB 484, the committee recommends the following amendments to align remote work opportunities with those already available to CFL licensees. The below language is substantially similar to AB 2001, discussed above, which was finalized following a year of discussions between stakeholders, DFPI, and legislative staff. The committee recommends:

Replace current provisions of the bill with the following:

Section 17216 of the Financial Code is added to read:

(a) For purposes of this section:

(1) 'Encrypted' has the same meaning as provided in paragraph (4) of subdivision (i) of Section 1798.82 of the Civil Code.

(2) "Remote location" means a personal residence, or a temporary, nonpublic location not owned or leased by the licensee or an affiliate of the licensee that is not simultaneously physically accessible by anyone other than a single employee and individuals who maintain a common household with the employee. Remote location shall not include any licensed real estate office or place of business associated with a real estate office.

(b) A licensed escrow agent may designate an employee, when acting within the scope of employment, to perform work on the licensee's behalf at a remote location if the licensee does all of the following:

(1) Prohibits in-person consumer interactions, including the physical receipt and disbursement of cash or other monetary value or the disbursement of escrow funds, at a

remote location and does not advertise or designate a remote location to the public as a business location.

(2) Prohibits books and records, as determined by the department, from being physically mailed to, shipped to, or stored at a remote location except for storage on an encrypted device or encrypted media.

(3) Prohibits the physical receipt of mail or delivery of documents related to the licensee's licensed business at a remote location.

(4) Prohibits a consumer's personal information from being physically stored at a remote location except for storage on an encrypted device or encrypted media.

(5) Provides an employee working at a remote location with appropriate equipment, which may include encrypted devices, virtual private networks, and similar technology, to perform work and safeguard licensee records and consumer personal information.

(6) Adopts and adheres to appropriate, as determined by the department, written policies and procedures to supervise and maintain appropriate control over the work of employees at remote locations and safeguard the licensee's records and consumer personal information in connection with work at a remote location, including but not limited to, all of the following elements:

(A)Employee data security training.

(B)Maintenance of security logs of remote logins.

(C)Procedures designed to detect suspicious logins or attempted logins and to suspend access by potentially compromised accounts or equipment.

(D)Data breach response procedures.

(7) All books, records, and persons shall be made available to the Commissioner at a licensed location.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Escrow Association

### **Opposition**

None on file.

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