

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 360 (Wilk)
Version: February 10, 2021
Hearing Date: March 23, 2021
Fiscal: No
Urgency: No
AWM

SUBJECT

Consumer Credit Reporting Agencies Act: escrow agent rating services and escrow agents

DIGEST

Existing law, until January 1, 2022, requires an escrow agent rating service to comply with specified portions of the California Consumer Credit Reporting Agencies Act, and establishes policies and procedures intended to safeguard from theft or misuse any personally identifiable information the service obtains from an escrow agent. This bill extends the current sunset provision to January 1, 2027.

EXECUTIVE SUMMARY

Under current federal law, a bank or other financial entity that uses a third-party service provider in the course of certain consumer transactions – such as escrow agents – can be liable when the third-party service provider violates consumer protection laws. To protect against such liability, many financial entities began using third-party escrow agent rating services to vet escrow agents with which the financial entity might contract. Initially, escrow agents had no mechanism for confirming that the information passed on by escrow agent rating services was accurate, or to ensure that reports did not contain private personal information such as Social Security numbers. In 2013, the Legislature amended the Consumer Credit Reporting Agencies Act to give escrow agents certain rights to discover the contents of rating service reports and to require rating services, on request, to remove specified private, inaccurate, or irrelevant information. These provisions are currently scheduled to sunset on January 1, 2022.

This bill extends the sunset provision until January 1, 2027.

SB 360 is sponsored by the California Escrow Association and has no known opposition. This bill passed out of the Senate Banking and Financial Institutions Committee with a 9-0 vote.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Grants the Consumer Financial Protection Bureau (CFPB) jurisdiction to regulate certain financial institutions and third-party service providers working with those institutions to ensure compliance with applicable financial protection laws. (12 U.S.C. §§ 5514-5515, 5531.)
- 2) Permits banks to use third-party service providers for certain functions, such as escrow companies. The bank, however, retains the responsibility to ensure that third-party service providers comply with applicable consumer protection laws, and a bank whose third-party service provider violates those laws may be liable for the harm caused. (12 U.S.C. 5536; *see, e.g., In the Matter of Capital One Bank (USA), N.A.*, File No. 2012-CFPB-0001 (Jul. 16, 2012) [consent decree between CFPB and Capital One wherein Capital One agreed, without admitting fault, to refund approximately \$140 million to customers and pay a \$25 million civil penalty for consumer finance laws violated by Capital One's third-party call center].)

Existing state law:

- 1) Establishes the Consumer Credit Reporting Agencies Act (CCRAA), which establishes obligations of consumer credit reporting agencies, requirements for users of consumer credit reports, obligations of furnishers of credit information, and provides for remedies available to persons harmed through violations of the CCRAA, as specified. (Civ. Code, div. 1, part 4, tit. 1.6, §§ 1785.1 et seq.)
- 2) Defines "escrow" as "any transaction in which one person, for the purpose of effecting the sale, transfer, encumbering, or leasing of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property, or other 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, when it is then to be delivered by that third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agent or employee of any of the latter." (Civ. Code, § 1785.28(a)(1).)
- 3) Defines an "escrow agent" any of the following:
 - a) A natural person who performs escrow services for an entity licensed pursuant to the Escrow Law contained in Division 6 of the Financial Code.
 - b) A natural person who performs escrow services for a title insurer admitted pursuant to Article 3 of Chapter 1 of Part 2 of Division 1 of the Insurance or an underwritten title company licensed pursuant to Article 3.7 of Chapter 1 of Part 6 of Division 2 of the Insurance Code.
 - c) A natural person who performs escrow services for a controlled escrow company, as defined in section 12340.6 of the Insurance Code.

- d) A natural person licensed pursuant to the Real Estate Law contained in Division 4 of the Business and Professions Code and who performs escrow services in accordance with section 17006 of the Financial Code. (Civ. Code, § 1785.28(a)(2).)
- 4) Defines an “escrow agent rating service” as “a person or entity that prepares a report, for compensation or in expectation of compensation, for use by a creditor in evaluating the capacity of an escrow agent to perform escrow services in connection with an extension of credit” (Civ. Code, § 1785.28(a)(3), but excludes from the definition:
 - a) A creditor or an employee of a creditor evaluating an escrow agent in connection with an extension of credit by that creditor; and
 - b) An entity for which an escrow agent, as defined under the CCRAA, performs escrow services as an employee or an independent contractor. (Civ. Code, § 1785.28(a)(3).)
- 5) Extends specified CCRAA disclosure requirements – originally designed for consumers to obtain access to their own credit information – to escrow agent rating services, entitling escrow agents to obtain specified information about the information contained in escrow agent rating service reports. By including “escrow agent” within the definition of “consumer” and including “escrow agent rating service” within the definition of “reseller of credit information,” the escrow-specific portions of the CCRAA confers the following obligations and rights relating to escrow agent rating services:
 - a) Upon request and proper identification of any escrow agent, an escrow agent rating service must allow the escrow agent to visually inspect all files maintained regarding that agent at the time of the request. (Civ. Code, §§ 1785.10(a), 1785.22(b)(1).)
 - b) Upon contact from any escrow agent, an escrow agent rating service must inform the agent of their right to request a decoded written version of the file the rating service has on that agent. (Civ. Code, §§ 1785.10(b), 1785.22(b)(2).)
 - c) The escrow agent rating service shall, in response to a request from an escrow agent, disclose the recipients of any report the rating service has furnished regarding that agent within the 12-month period preceding the request. (Civ. Code, §§ 1785.10(d), 1785.22(b)(3).)
 - d) An escrow agent shall furnish a report on an escrow agent only in accordance with written instructions received by the escrow agent to whom it relates, if any. (Civ. Code, §§ 1785.11(a)(2), 1785.22(b)(4).)
 - e) An escrow agent rating service’s report on an escrow may not include: bankruptcies that antedate the report by more than 10 years; suits and judgments that antedate the report by more than seven years; unlawful detainer actions, unless the lessor was the prevailing party; paid tax liens that antedate the report by more than seven years; accounts placed for collection or charged to profit or loss that antedate the report by more than seven years; records of arrest or other adverse information that antedates the report by

- more than seven years; and any other adverse information that antedates the report by more than seven years. (Civ. Code, §§ 1785.13, 1785.22(b)(5).)
- f) An escrow agent rating service shall maintain reasonable procedures to ensure that escrow agent reports are furnished only to persons entitled to receive them and the maximum possible accuracy of the information contained in those reports. (Civ. Code, §§ 1785.14, 1785.22(b)(6).)
 - g) When an escrow agent makes a proper request for the escrow agent's files as set forth above in item a), an escrow agent rating service must supply either a decoded written version of that file or a written copy of that file, including all information in the file at the time of the request, with an explanation of any code used. (Civ. Code, §§ 1785.15(a)(1), 1785.22(b)(7).)
 - h) Requires an escrow agent rating service, upon receipt of a notice that an escrow agent disputes information contained in that agent's report, to reinvestigate information that is disputed within 30 days, unless the rating service has reason to believe the dispute is frivolous or irrelevant. If the rating service determines the information is inaccurate, missing, or cannot be verified, the rating agent must correct the file. When the rating agency receives such a notice, the rating agency must include the notice, or an accurate summary of the dispute, in the escrow agent's file. (Civ. Code, §§ 1785.16, 1785.22(b)(8).)
 - i) An escrow agent rating service must specify the source of any public records included in their escrow agent reports and the date that information was reported or publicized. Escrow agent reports may not include information on the age, marital status, race, color, or creed of any escrow agent. (Civ. Code, §§ 1785.18, 1785.22(b)(9).)
- 6) Grants a cause of action to an escrow agent against an escrow agent rating service, where the escrow agent rating service failed to comply with the above requirements and the escrow agent suffered damages as a result of that failure. (Civ. Code, § 1785.22(e).)
- 7) Contains a sunset clause for the escrow-agent-related portions of the CCRAA set forth above, repealing them on January 1, 2022. (Civ. Code, § 1785.28.6.)

This bill:

- 1) Extends the existing sunset provision from January 1, 2022, to January 1, 2027.

COMMENTS

1. Author's comment

According to the author:

In 2013, the California Legislature enacted important protections for California escrow agents. New entities, defined as “escrow agent rating services” in Civil Code Section 1785.28, were evaluating the suitability of escrow agents to perform settlement services by examining credit information, bankruptcy filings, and other criteria. These companies were providing the services as third-party vendors for lenders to assist with federal requirements to conduct due diligence on their vendors. The 2013 bill applied important protections from California’s credit reporting laws to escrow agents, such as the right to receive a copy of any report produced by the rating service, and the right to dispute and correct inaccurate information. Without these protections, escrow agents could literally be put out of business based upon inaccurate information. The 2013 bill included a January 1, 2017 sunset date, to determine if any problems arose for lenders or others as a result of extending credit report protections to these ratings services. Assembly Bill 2416 (Wilk) repealed this sunset date, and set a new sunset date as January 1, 2022, as the Legislature was aware of no implementation problems. This bill merely extends these protections to January 1, 2027.

2. Extending the sunset provision to 2027 would keep in place protections for escrow agents against unfair, inaccurate, or private information by escrow agent rating services

In 2012, the CFPB made clear that financial institutions under its jurisdiction that outsource key functions to third-party service providers could be liable if those third-party service providers violated consumer protection laws.¹ In response to the CFPB’s announcement, some companies (self-described as “risk management providers”) now offer to vet service providers (such as escrow agents) for financial institutions. Some of those companies reportedly charge fees to the service provider for inclusion (or preferential treatment) in their database and prepare reports regarding these providers using a combination of public and private data.

In 2013, the Legislature responded to concerns from escrow agents about the business practices of these companies by enacting AB 1169 (Daly, Ch. 380, Stats. 2013). AB 1169 enacted safeguards to ensure that escrow agents are able to obtain access to information that these third party vetting companies have collected about them, as well as to

¹ See CFPB Bulletin 2012-03, *Service Providers* (Apr. 13, 2012), available at https://files.consumerfinance.gov/f/documents/201204_cfpb_bulletin_service-providers.pdf [last visited Mar. 8, 2021]; see also CFPB Compliance Bulletin and Policy Guidance 2016-02, *Service Providers* (Oct. 31, 2016), available at https://files.consumerfinance.gov/f/documents/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf [last visited Mar. 8, 2021] (reissuing and reaffirming prior bulletin).

challenge information they believe is incorrect or misleading. Specifically, AB 1169 adapted certain protections and rights granted to consumers with respect to credit reporting agencies to the context of escrow agents and escrow agent rating services. The analogy is apt: just as false or irrelevant information on a credit report can harm a consumer's financial and job prospects, so can false or irrelevant information in an escrow agent rating service's report harm an escrow agent by preventing the agent from getting a contact they were otherwise qualified for.

AB 1169 was originally scheduled to sunset on January 1, 2017; the sunset was extended to January 1, 2022, in AB 2416 (Wilk, Ch. 135, Stats. 2016). This bill would extend the sunset provision again, until January 1, 2027.

According to the Senate Banking and Finance Committee's analysis of this bill, the escrow-agent protection regime put in place by AB 1169 is being used less to control information already in escrow agent rating services' reports and more to push back against rating services' requests for personal, private information that has no bearing on an escrow agent's ability to do the job – information such as the escrow agent's Social Security number, driver's license number, and home address. Accordingly, in the absence of opposition, it appears that extending the sunset would continue to provide important protections for escrow agents, allowing them to push back against unreasonable, invasive requests for information.

SUPPORT

California Escrow Association (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 373 (Min, 2021) prohibits credit ratings agencies, and by extension, escrow agent rating agencies, from including in any report debts incurred as a result of economic abuse, where the subject of the report has provided documentation establishing that the debts were so incurred. SB 373 is pending before the Senate Banking and Financial Institutions Committee.

Prior Legislation:

AB 2416 (Wilk, Ch. 135, Stats. 2016) extended the sunset provision for the escrow agent rating agency provisions from January 1, 2017, to January 1, 2022.

AB 1169 (Daly, Ch. 380, Stats. 2013) expanded the CCRAA to apply to escrow agent rating agencies, with the conditions and requirements currently in effect, with a sunset provision repealing the bill as of January 1, 2017.

PRIOR VOTES:

Senate Banking and Financial Institutions Committee (Ayes 9, Noes 0)
