



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

**AB-1460 Licensees: fiduciary funds.** (2017-2018)

SHARE THIS:  

Date Published: 07/18/2017 09:00 PM

**Assembly Bill No. 1460**

**CHAPTER 69**

An act to amend Sections 1734 and 1734.5 of the Insurance Code, relating to insurance.

[ Approved by Governor July 17, 2017. Filed with Secretary of State July 17, 2017. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1460, Dababneh. Licensees: fiduciary funds.

Existing law requires that all funds received by any person acting as a licensed insurance producer, an administrator, a surplus line broker, or a bail licensee, as premium or return premium on or under any policy of insurance or undertaking of bail, are received and held by that person in his or her fiduciary capacity. Existing law requires a person who holds one of the above-described licenses who receives fiduciary funds to maintain those funds, as provided, including, but not limited to, maintaining those funds on California business, at all times in a trustee bank account or depository in California, separate from any other account or depository, in specified amounts.

This bill would delete the requirement that the funds be maintained in a trustee bank account or depository in California and would instead require the funds be maintained in a trust account in a bank or savings and loan association, within any state of the United States, which account is insured by the Federal Deposit Insurance Corporation (FDIC) and is licensed by any state government within the United States or by the United States government.

Existing law authorizes an above-described licensee to hold fiduciary funds in bonds, certificates, obligations, certificates of deposit, and repurchase agreements. Existing law requires a bank, as defined, or savings association, as defined, to maintain evidence of those fiduciary funds on California business, in a custodian or trust account in California, separate from any other funds, in specified amounts.

This bill, among other things, would delete the reference to the fiduciary funds being in a custodian or trust account in California and the definitions for a bank and a savings association and would require evidence of the funds to be maintained at all times in a trust account in a bank or savings and loan association within any state of the United States, which account is insured by the FDIC and is licensed by any state government within the United States or by the United States government, as specified. The bill would require all administrative actions involving trust accounts to be subject to the jurisdiction of the commissioner, and all suits involving trust accounts to be subject to the jurisdiction of the courts of this state and the federal courts located within the State of California. The bill would require the licensee, as a condition of maintaining its license, to file and maintain with the Insurance Commissioner a written designation of the agent for service of process in this state for the trust account located outside the State of California being utilized by the licensee. The bill would also require any licensee who receives fiduciary funds as cash to initially maintain those funds in a trust account in a bank or savings and loan association in California, licensed by the State of California or the United States government and insured by the FDIC.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 1734 of the Insurance Code is amended to read:

**1734.** This section applies to any person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733. If fiduciary funds, as defined in Section 1733, are received by that person, he or she shall do one of the following:

(a) Remit premiums, less commissions, and return premiums received or held by him or her to the insurer or the person entitled thereto.

(b) Maintain those fiduciary funds at all times in a trust account in a bank or savings and loan association, within any state of the United States, which account is insured by the Federal Deposit Insurance Corporation (FDIC), and is licensed by any state government within the United States or by the United States government, separate from any other account, in an amount at least equal to the premiums and return premiums, net of commissions, received by him or her and unpaid to the persons entitled thereto or, at their direction or pursuant to written contract, for the account of those persons. However, that person may commingle with those fiduciary funds in the account those additional funds as he or she may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return commissions, or for those contingencies as may arise in his or her business of receiving and transmitting premium or return premium funds.

(c) Maintain those fiduciary funds pursuant to Section 1734.5.

**SEC. 2.** Section 1734.5 of the Insurance Code is amended to read:

**1734.5.** (a) (1) If fiduciary funds, as defined in Section 1733, are received by any person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733, and the funds are not remitted, or maintained pursuant to subdivisions (a) and (b) of Section 1734, except as provided in subdivision (f), the funds shall be maintained in any of the following:

(A) United States government bonds and treasury certificates or other obligations for which the full faith and credit of the United States are pledged for payment of principal and interest.

(B) Certificates of deposit of banks or savings and loan associations, which are insured by the Federal Deposit Insurance Corporation (FDIC) and licensed by any state government within the United States or by the United States government.

(C) Repurchase agreements collateralized by securities issued by the United States government.

(D) Either of the following:

(i) Bonds and other obligations of this state or of any local agency or district of the State of California having the power, without limit as to rate or amount, to levy taxes or assessments upon all property within its boundaries subject to taxation or assessment by the local agency or district to pay the principal and interest of the obligations.

(ii) Revenue bonds and other obligations payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by this state, or a local agency or district, or by a department, board, agency, or authority thereof.

(2) The bonds and obligations described in subparagraph (D) of paragraph (1) shall either have maturities of not more than one year or afford the holder of the obligation the unilateral right to redeem the obligation from its issuer within one year from date of purchase at an amount equal to, or greater than, its par value, and the bonds and obligations shall be required to be rated at least Aa1, MIG-1/VMIG-1, or Prime-1 by Moody's Investor Service, Inc., or AA, SP-1, or A-1 by Standard and Poor's Corporation.

(3) For the fiduciary funds maintained as provided in paragraph (1), the bonds, certificates, obligations, certificates of deposit, and repurchase agreements shall be valued on the basis of their acquisition cost.

(b) As a condition to maintaining the fiduciary funds pursuant to this section, a written agreement shall be obtained from each and every insurer or person entitled thereto authorizing the maintenance and the retention of any earnings accruing on the funds.

(c) Except as provided in subdivision (f), evidence of the funds shall be maintained at all times in a trust account in a bank or savings and loan association within any state of the United States, which account is insured by the FDIC and which institution is licensed by any state government within the United States or by the United States government, separate from any other funds, in an amount at least equal to the premiums and return premiums, net of commissions received by him or her and unpaid to the persons entitled thereto, or, at their discretion or pursuant to a written contract, for the account of these persons. However, the

person may commingle with the fiduciary funds any additional funds as he or she may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return premiums, or for any contingencies that may arise in his or her business of receiving and transmitting premium or return premium funds.

(d) All administrative actions involving trust accounts shall be subject to the jurisdiction of the commissioner. All suits involving trust accounts shall be subject to the jurisdiction of the courts of the State of California and the federal courts located within the State of California.

(1) Any licensee specified in Section 1733 utilizing a trust account located outside of the State of California shall be required to file and maintain in the commissioner's office, as a condition of maintaining a license, a written designation identifying the agent for service of process in this state for the bank or savings and loan association located outside the State of California being utilized by the licensee. The designated agent shall be a person residing in this state. The writing shall state the name of the agent and his or her place of business in this state with sufficient particularity so that he or she can readily be found by peace officers or process servers. Appointment of an agent reasonably available for service of papers, notice, proof of loss, summons, or other process during business hours shall be continuously maintained by every licensee subject to this article while the licensee holds a valid and unrevoked license.

(2) The commissioner shall not have jurisdiction over any disputes arising between parties concerning the maintenance of fiduciary funds pursuant to this section. However, this subdivision shall not otherwise affect the authority granted to the commissioner over fiduciary funds by other provisions of this code, or regulations adopted pursuant thereto. As used in this subdivision, "parties" shall not include the commissioner.

(e) Investment losses to the principal of fiduciary funds maintained pursuant to this section are the responsibility of the person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733, and any obligation to insurers or other persons entitled to the fiduciary funds shall in no way be diminished due to any loss in the value to the principal of the fiduciary funds held pursuant to this section.

(f) Any fiduciary funds, as defined in Section 1733, received as cash, lawful money of the United States, or freely tradeable currency of any foreign government, by any person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733, shall comply with Section 1734, but shall initially be maintained in a trust account in a bank or savings and loan association in California, licensed by the State of California or the United States government and insured by the FDIC.