

HOUSE BILL NO. 45
INTRODUCED BY LAWSON
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS CONCERNING ESCROW BUSINESSES; REQUIRING APPLICANTS FOR AN ESCROW BUSINESS LICENSE TO POST A ~~\$100,000~~ BOND IN AN AMOUNT TO BE SET BY THE DEPARTMENT OF ADMINISTRATION BY RULE; ESTABLISHING THE AMOUNT OF THE INITIAL LICENSE FEE AS \$350 AND THE AMOUNT OF THE ANNUAL LICENSE RENEWAL FEE AS \$100; PROVIDING THAT FUNDS AVAILABLE FOR WITHDRAWAL FROM AN ESCROW ACCOUNT AS A MATTER OF RIGHT MUST BE DISBURSED WITHIN 5 BUSINESS DAYS; AND AMENDING SECTIONS 32-7-109, 32-7-110, AND 32-7-117, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 32-7-109, MCA, is amended to read:

"32-7-109. Application for license -- bond -- issuance. (1) A person must be licensed pursuant to this part before engaging in an escrow business.

(2) To obtain a license, an applicant shall file with the director an application for an escrow business license. The application must be in writing, verified by oath, and in the form prescribed by the director. The application must set forth:

- (a) the location of the applicant's principal office and all branch offices in this state;
- (b) the name and form under which the applicant plans to conduct business;
- (c) the general plan and character of the business;
- (d) the names, residences, and business addresses of any principals, partners, officers, trustees, and directors, specifying as to each ~~his~~ the respective capacity and title;
- (e) the experience and qualifications of the persons proposed to act as officers and managers;
- (f) the length of time the applicant has been engaged in the escrow business; and
- (g) any other relevant information the director requires.

(3) An applicant shall file with the license application a bond in the amount of \$100,000 AN AMOUNT TO BE SET BY THE DEPARTMENT BY RULE. The bond must be conditioned on the applicant conducting the escrow business in accordance with the requirements of law. All bonds must be filed with the department, approved by

the department, and renewed annually.

~~(3)~~(4) The director shall grant and issue an escrow business license if:

(a) the director has received the bond and application and ~~filed the application~~ specified in this section;

and

(b) the applicant has complied with all the requirements of this part and any rules promulgated under it.

~~(4)~~(5) An escrow business shall immediately notify the department of any material change in the information contained in the application."

Section 2. Section 32-7-110, MCA, is amended to read:

"32-7-110. Fees. (1) (a) An applicant for licensure shall pay a an initial license fee ~~set by the director,~~ commensurate with the costs of licensing the applicant of \$350.

(b) Licenses expire annually on June 30. A licensee shall, on or before June 1, pay an annual license renewal fee of \$100. A licensee's failure to pay the annual license renewal fee within the time prescribed results in an automatic revocation of the license.

~~(b)~~(c) A licensee may be charged an examination fee based on the actual costs of the examination.

(2) All fees collected by the department for the licensure and examination of escrow businesses must be paid to the state treasurer to the credit of the state special revenue fund for use by the department in its licensure and examination functions under this part."

Section 3. Section 32-7-117, MCA, is amended to read:

"32-7-117. Deposit of funds required -- disbursement. (1) All money deposited in an escrow to be delivered upon the close of the escrow or upon any other contingency must be deposited with a financial institution, as defined in 32-6-103, doing business in this state and must be kept separate, distinct, and apart from funds belonging to the escrow business. The funds, when deposited, must be designated as "escrow accounts" or given some other appropriate designation indicating that the funds are not the funds of the escrow business.

(2) A person may not knowingly keep or cause to be kept any funds or money with a financial institution, as defined in 32-6-103, under the heading of "escrow accounts" or any other name designating the funds or money as belonging to the clients of any escrow business, except actual escrow funds deposited with the escrow business.

(3) Escrow funds are not subject to execution or attachment on any claim against the escrow business.

(4) Any interest received on funds deposited with an escrow business in connection with any escrow that

is deposited in an authorized depository must be paid over to the depositing party to the escrow account and may not be transferred to an account of the escrow business. This section does not limit or restrain the right of the depositing party to contract with respect to the interest received on the deposits by an independent agreement.

(5) An escrow business may not disburse funds from any escrow account until cash, items, or drafts in an amount sufficient to fund any disbursements from the account have been received and deposited in the account and are available for withdrawal from the account as a matter of right. If sufficient funds are available for withdrawal from the account as a matter of right, required disbursements must be made within 5 business days of the receipt of sufficient funds. For the purposes of this subsection (5), the following definitions apply:

(a) "Available for withdrawal from the account as a matter of right" means that the bank or savings and loan association in which an item has been deposited considers the item available for withdrawal as a matter of right and that a final settlement will occur in writing with respect to that item.

(b) "Item" means any check, including a cashier's check, negotiable order of withdrawal, share draft, traveler's check, or money order."

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