

AMENDED IN ASSEMBLY MAY 2, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1723

**Introduced by Committee on Judiciary (Jones (Chair), Evans,
Feuer, Krekorian, Laird, Levine, and Lieber)**

March 6, 2007

An act to amend ~~Section 6211~~ *Sections 6091.2, 6211, 6212, and 6213* of the Business and Professions Code, relating to attorneys.

LEGISLATIVE COUNSEL'S DIGEST

AB 1723, as amended, Committee on Judiciary. Attorneys: ~~interest on lawyer trust~~ *IOLTA* accounts.

Existing law, the State Bar Act, provides for the licensing and regulation of the practice of law by the State Bar of California. Existing law requires an attorney or law firm that receives or disburses trust funds to establish an interest bearing demand trust account and to deposit in the account all client deposits that are nominal in amount or are on deposit for a short period of time. *Existing law requires the account to be established with a bank or other financial institution account authorized by the Supreme Court, and requires the depository institution to meet certain requirements, including transmitting a remittance statement to the Supreme Court.* Existing law requires that the earnings from these trust accounts be paid to the State Bar to be used for programs for free legal services for indigent persons.

This bill would instead require that the above funds be deposited in ~~interest on lawyer trust~~ *IOLTA* accounts, and would ~~also~~ require that the dividends earned on the accounts be paid to the State Bar of California *in the same manner as interest. The bill would require an IOLTA account to be established and maintained with an eligible*

institutions, as defined, offering or making available an IOLTA accounting meeting specified requirements, including offering a rate of interest or dividends not less than that generally paid to nonattorney customers on similar accounts. The bill would require an eligible institution to charge only reasonable fees in accordance with customary practice, and would make any fees or service charges the sole responsibility of the lawyer or law firm maintaining the IOLTA account and payable only from the interest or dividends on the account, as specified. The bill would require an eligible institution’s remittance statement to include the average balance for each account for each month. The bill would also make related changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6091.2 of the Business and Professions
 2 Code is amended to read:
 3 6091.2. As used in Section 6091.1:
 4 (a) “Financial institution” means a bank, savings and loan, or
 5 other financial institution ~~regulated by a federal or state agency,~~
 6 ~~which can accept those deposits, pay interest thereon, and insure~~
 7 ~~the deposits by an agency of the federal government, and if the~~
 8 ~~depository has a notice of withdrawal requirement, the required~~
 9 ~~notice does not exceed 30 days serving as a depository for attorney~~
 10 ~~trust accounts under subdivision (a) or (b) of Section 6211.~~
 11 (b) “Properly payable” means an instrument ~~which~~ *that*, if
 12 presented in the normal course of business, is in a form requiring
 13 payment under the laws of this state.
 14 (c) “Notice of dishonor” means the notice ~~which~~ *that* a financial
 15 institution is required to give, under the laws of this state, upon
 16 presentation of an instrument ~~which~~ *that* the institution dishonors.
 17 SECTION 1.
 18 SEC. 2. Section 6211 of the Business and Professions Code is
 19 amended to read:
 20 6211. (a) An attorney or law firm, which in the course of the
 21 practice of law receives or disburses trust funds, shall establish
 22 and maintain an ~~interest on lawyer trust account (IOLTA account)~~
 23 *IOLTA account* in which the attorney or law firm shall deposit *or*
 24 *invest* all client deposits *or funds* that are nominal in amount or

1 are on deposit *or invested* for a short period of time. All such client
2 funds may be deposited *or invested* in a single unsegregated
3 account. The interest and dividends earned on all—~~such those~~
4 accounts shall be paid to the State Bar of California to be used for
5 the purposes set forth in this article.

6 (b) Nothing in this article shall be construed to prohibit an
7 attorney or law firm from establishing one or more interest—~~or~~
8 ~~dividend~~ bearing bank *trust deposit* accounts or ~~other trust~~
9 ~~investments~~ *dividend-paying trust investment accounts* as may be
10 permitted by the Supreme Court, with the interest or dividends
11 earned on the accounts payable to clients for trust funds not
12 deposited *or invested* in accordance with subdivision (a).

13 (c) With the approval of the Supreme Court, the State Bar may
14 formulate and enforce rules of professional conduct pertaining to
15 the use by attorneys or law firms of ~~IOLTA accounts~~ *an IOLTA*
16 *account* for unsegregated client funds pursuant to this article.

17 (d) Nothing in this article shall be construed as affecting or
18 impairing the disciplinary powers and authority of the Supreme
19 Court or of the State Bar or as modifying the statutes and rules
20 governing the conduct of members of the State Bar.

21 *SEC. 3. Section 6212 of the Business and Professions Code is*
22 *amended to read:*

23 6212. An attorney who, or a law firm ~~which that~~, establishes
24 an ~~interest bearing demand trust~~ *IOLTA* account pursuant to
25 subdivision (a) of Section 6211 shall comply with all of the
26 following provisions:

27 (a) ~~The interest bearing trust~~ *IOLTA* account shall be established
28 ~~and maintained with a bank or such other financial institutions as~~
29 ~~are authorized by the Supreme Court~~ *an eligible institution offering*
30 *or making available an IOLTA account that meets the requirements*
31 *of this article. The IOLTA account shall be established and*
32 *maintained consistent with the attorney or law firm's duties of*
33 *professional responsibility. An eligible financial institution shall*
34 *have no responsibility for selecting the deposit or investment*
35 *product chosen for the IOLTA account.*

36 (b) ~~The~~ *Except as provided in subdivision (e), the rate of interest*
37 *or dividends payable on any interest bearing demand trust IOLTA*
38 *account shall not be less than the interest rate or dividends*
39 *generally paid by the depository eligible institution to regular,*
40 *nonattorney depositors. Higher rates offered by the institution to*

1 ~~customers whose deposits exceed certain time or quantity~~
2 ~~qualifications, such as those offered in the form of certificates of~~
3 ~~deposit, may be obtained by an attorney or law firm so long as~~
4 ~~there is no impairment of the right to withdraw or transfer principal~~
5 ~~immediately (except as accounts generally may be subject to~~
6 ~~statutory notification requirements), even though interest may be~~
7 ~~sacrificed thereby~~ *customers on accounts of the same type meeting*
8 *the same minimum balance and other eligibility requirements as*
9 *the IOLTA account. In determining the interest rate or dividend*
10 *payable on any IOLTA account, an eligible institution may*
11 *consider, in addition to the balance in the IOLTA account, risk or*
12 *other factors customarily considered by the eligible institution*
13 *when setting the interest rate or dividends for its non-IOLTA*
14 *accounts, provided that the factors do not discriminate between*
15 *IOLTA customers and non-IOLTA customers and that these factors*
16 *do not include the fact that the account is an IOLTA account. The*
17 *eligible institution shall calculate interest and dividends in*
18 *accordance with its standard practice for non-IOLTA customers.*
19 *Nothing in this article shall preclude an eligible institution from*
20 *paying a higher interest rate or dividend on an IOLTA account or*
21 *from electing to waive any fees and service charges on an IOLTA*
22 *account.*

23 *(c) Reasonable fees may be deducted from the interest or*
24 *dividends remitted on an IOLTA account only at the rates and in*
25 *accordance with the customary practices of the eligible institution*
26 *for non-IOLTA customers. No other fees or service charges may*
27 *be deducted from the interest or dividends earned on an IOLTA*
28 *account. Unless and until the State Bar enacts regulations*
29 *exempting from compliance with subdivision (a) of Section 6211*
30 *those accounts for which maintenance fees exceed the interest or*
31 *dividends paid, an eligible institution may deduct the fees and*
32 *service charges in excess of the interest or dividends paid on an*
33 *IOLTA account from the aggregate interest and dividends remitted*
34 *to the State Bar. Any fees and service charges other than*
35 *reasonable fees shall be the sole responsibility of, and may only*
36 *be charged to, the lawyer or law firm maintaining the IOLTA*
37 *account. No fees or charges may be assessed against or deducted*
38 *from the principal of any IOLTA account. It is the intent of the*
39 *Legislature that the State Bar develop policies so that eligible*
40 *institutions not incur uncompensated administrative costs in*

1 *adapting their systems to comply with the provisions of this section*
2 *or in making investment products available to IOLTA members.*

3 (e)

4 (d) The ~~depository~~ *eligible* institution shall be directed to do all
5 of the following:

6 (1) To remit interest *or dividends* on the ~~average daily balance~~
7 ~~in the IOLTA account, less reasonable service charges fees,~~ to the
8 State Bar, at least quarterly.

9 (2) To transmit to the State Bar with each remittance a statement
10 showing the name of the attorney or law firm for whom the
11 remittance is sent, *for each account* the rate of interest applied *or*
12 *dividend paid,* and the amount *and type* of ~~service charges fees~~
13 deducted, if any, *and the average balance for each account for*
14 *each month of the period for which the report is made.*

15 (3) To transmit to the ~~depositing~~ attorney or law firm *customer*
16 at the same time a report showing the amount paid to the State Bar
17 for that period, the rate of interest *or dividend* applied, the amount
18 of *fees and* service charges deducted, if any, and the average daily
19 account balance for each month of the period for which the report
20 is made.

21 (e) *An eligible institution has no affirmative duty to offer or*
22 *make investment products available to IOLTA customers. However,*
23 *if an eligible institution offers or makes investment products*
24 *available to non-IOLTA customers, in order to remain an IOLTA*
25 *eligible institution, it shall make those products available to IOLTA*
26 *customers or pay an interest rate on the IOLTA deposit account*
27 *that is comparable to the rate of return or the dividends generally*
28 *paid on that investment product for similar customers meeting the*
29 *same minimum balance and other requirements applicable to the*
30 *investment product. If the eligible institution elects to pay that*
31 *higher interest rate, the eligible institution may subject the IOLTA*
32 *deposit account to equivalent fees and charges assessable against*
33 *the investment product.*

34 *SEC. 4. Section 6213 of the Business and Professions Code is*
35 *amended to read:*

36 6213. As used in this article:

37 (a) “Qualified legal services project” means either of the
38 following:

39 (1) A nonprofit project incorporated and operated exclusively
40 in California which provides as its primary purpose and function

1 legal services without charge to indigent persons and which has
2 quality control procedures approved by the State Bar of California.

3 (2) A program operated exclusively in California by a nonprofit
4 law school accredited by the State Bar of California which meets
5 the requirements of subparagraphs (A) and (B).

6 (A) The program shall have operated for at least two years at a
7 cost of at least twenty thousand dollars (\$20,000) per year as an
8 identifiable law school unit with a primary purpose and function
9 of providing legal services without charge to indigent persons.

10 (B) The program shall have quality control procedures approved
11 by the State Bar of California.

12 (b) “Qualified support center” means an incorporated nonprofit
13 legal services center, which has as its primary purpose and function
14 the provision of legal training, legal technical assistance, or
15 advocacy support without charge and which actually provides
16 through an office in California a significant level of legal training,
17 legal technical assistance, or advocacy support without charge to
18 qualified legal services projects on a statewide basis in California.

19 (c) “Recipient” means a qualified legal services project or
20 support center receiving financial assistance under this article.

21 (d) “Indigent person” means a person whose income is (1) 125
22 percent or less of the current poverty threshold established by the
23 United States Office of Management and Budget, or (2) who is
24 eligible for Supplemental Security Income or free services under
25 the Older Americans Act or Developmentally Disabled Assistance
26 Act. With regard to a project which provides free services of
27 attorneys in private practice without compensation, “indigent
28 person” also means a person whose income is 75 percent or less
29 of the maximum levels of income for lower income households
30 as defined in Section 50079.5 of the Health and Safety Code. For
31 the purpose of this subdivision, the income of a person who is
32 disabled shall be determined after deducting the costs of medical
33 and other disability-related special expenses.

34 (e) “Fee generating case” means any case or matter ~~which~~ *that*,
35 if undertaken on behalf of an indigent person by an attorney in
36 private practice, reasonably may be expected to result in payment
37 of a fee for legal services from an award to a client, from public
38 funds, or from the opposing party. A case shall not be considered
39 fee generating if adequate representation is unavailable and any
40 of the following circumstances exist:

1 (1) The recipient has determined that free referral is not possible
2 because of any of the following reasons:

3 (A) The case has been rejected by the local lawyer referral
4 service, or if there is no such service, by two attorneys in private
5 practice who have experience in the subject matter of the case.

6 (B) Neither the referral service nor any attorney will consider
7 the case without payment of a consultation fee.

8 (C) The case is of the type that attorneys in private practice in
9 the area ordinarily do not accept, or do not accept without
10 prepayment of a fee.

11 (D) Emergency circumstances compel immediate action before
12 referral can be made, but the client is advised that, if appropriate
13 and consistent with professional responsibility, referral will be
14 attempted at a later time.

15 (2) Recovery of damages is not the principal object of the case
16 and a request for damages is merely ancillary to an action for
17 equitable or other nonpecuniary relief, or inclusion of a
18 counterclaim requesting damages is necessary for effective defense
19 or because of applicable rules governing joinder of counterclaims.

20 (3) A court has appointed a recipient or an employee of a
21 recipient pursuant to a statute or a court rule or practice of equal
22 applicability to all attorneys in the jurisdiction.

23 (4) The case involves the rights of a claimant under a publicly
24 supported benefit program for which entitlement to benefit is based
25 on need.

26 (f) “Legal Services Corporation” means the Legal Services
27 Corporation established under the Legal Services Corporation Act
28 of 1974 (Public Law 93-355; 42 U.S.C. Sec. 2996 et seq.).

29 (g) “Older Americans Act” means the Older Americans Act of
30 1965, as amended (Public Law 89-73; 42 U.S.C. Sec. 3001 et seq.).

31 (h) “Developmentally Disabled Assistance Act” means the
32 Developmentally Disabled Assistance and Bill of Rights Act of
33 1975, as amended (Public Law 94-103; 42 U.S.C. Sec. 6001 et
34 seq.).

35 (i) “Supplemental security income recipient” means an
36 individual receiving or eligible to receive payments under Title
37 XVI of the federal Social Security Act, or payments under Chapter
38 3 (commencing with Section 12000) of Part 3 of Division 9 of the
39 Welfare and Institutions Code.

40 (j) “*IOLTA account*” means any of the following:

1 (1) *An interest-bearing checking account.*

2 (2) *An investment sweep product that is a daily (overnight)*
3 *financial institution repurchase agreement or an open-end*
4 *money-market fund.*

5 (3) *Any other investment product authorized by California*
6 *Supreme Court rule or order and established and maintained*
7 *pursuant to subdivision (a) of Section 6211.*

8 *A daily financial institution repurchase agreement shall be fully*
9 *collateralized by United States Government Securities or other*
10 *comparably conservative debt securities, and may be established*
11 *only with any eligible institution that is “well-capitalized” or*
12 *“adequately capitalized” as those terms are defined by applicable*
13 *federal statutes and regulations. An open-end money-market fund*
14 *shall be invested solely in United States Government Securities or*
15 *repurchase agreements fully collateralized by United States*
16 *Government Securities, shall hold itself out as a “money-market*
17 *fund” as that term is defined by federal statutes and regulations*
18 *under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1*
19 *et seq.), and, at that time of the investment, shall have total assets*
20 *of at least two hundred fifty million dollars (\$250,000,000).*

21 (k) *“Eligible institution” means a bank or any other type of*
22 *financial institution authorized by the Supreme Court.*