

AMENDED IN ASSEMBLY MAY 10, 2007

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 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: 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 IOLTA accounts, and would 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~~ *institution*, as defined, offering or making available an IOLTA ~~accounting~~ *account* 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~~ *authorize* 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 serving as a depository for attorney trust
 6 accounts under subdivision (a) or (b) of Section 6211.
 7 (b) “Properly payable” means an instrument that, if presented
 8 in the normal course of business, is in a form requiring payment
 9 under the laws of this state.
 10 (c) “Notice of dishonor” means the notice that a financial
 11 institution is required to give, under the laws of this state, upon
 12 presentation of an instrument that the institution dishonors.
 13 SEC. 2. Section 6211 of the Business and Professions Code is
 14 amended to read:
 15 6211. (a) An attorney or law firm, which in the course of the
 16 practice of law receives or disburses trust funds, shall establish
 17 and maintain an IOLTA account in which the attorney or law firm
 18 shall deposit or invest all client deposits or funds that are nominal
 19 in amount or are on deposit or invested for a short period of time.
 20 All such client funds may be deposited or invested in a single
 21 unsegregated account. The interest and dividends earned on all

1 those accounts shall be paid to the State Bar of California to be
2 used for the purposes set forth in this article.

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

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

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

18 SEC. 3. Section 6212 of the Business and Professions Code is
19 amended to read:

20 6212. An attorney who, or a law firm that, establishes an
21 IOLTA account pursuant to subdivision (a) of Section 6211 shall
22 comply with all of the following provisions:

23 (a) The IOLTA account shall be established and maintained
24 with an eligible institution offering or making available an IOLTA
25 account that meets the requirements of this article. The IOLTA
26 account shall be established and maintained consistent with the
27 attorney or law firm's duties of professional responsibility. An
28 eligible financial institution shall have no responsibility for
29 selecting the deposit or investment product chosen for the IOLTA
30 account.

31 (b) Except as provided in subdivision (e), the rate of interest or
32 dividends payable on any IOLTA account shall not be less than
33 the interest rate or dividends generally paid by the eligible
34 institution to nonattorney customers on accounts of the same type
35 meeting the same minimum balance and other eligibility
36 requirements as the IOLTA account. In determining the interest
37 rate or dividend payable on any IOLTA account, an eligible
38 institution may consider, in addition to the balance in the IOLTA
39 account, risk or other factors customarily considered by the eligible
40 institution when setting the interest rate or dividends for its

1 non-IOLTA accounts, provided that the factors do not discriminate
2 between IOLTA customers and non-IOLTA customers and that
3 these factors do not include the fact that the account is an IOLTA
4 account. The eligible institution shall calculate interest and
5 dividends in accordance with its standard practice for non-IOLTA
6 customers. Nothing in this article shall preclude an eligible
7 institution from paying a higher interest rate or dividend on an
8 IOLTA account or from electing to waive any fees and service
9 charges on an IOLTA account.

10 (c) Reasonable fees may be deducted from the interest or
11 dividends remitted on an IOLTA account only at the rates and in
12 accordance with the customary practices of the eligible institution
13 for non-IOLTA customers. No other fees or service charges may
14 be deducted from the interest or dividends earned on an IOLTA
15 account. Unless and until the State Bar enacts regulations
16 exempting from compliance with subdivision (a) of Section 6211
17 those accounts for which maintenance fees exceed the interest or
18 dividends paid, an eligible institution may deduct the fees and
19 service charges in excess of the interest or dividends paid on an
20 IOLTA account from the aggregate interest and dividends remitted
21 to the State Bar. Any fees and service charges other than reasonable
22 fees shall be the sole responsibility of, and may only be charged
23 to, the lawyer or law firm maintaining the IOLTA account. No
24 fees or charges may be assessed against or deducted from the
25 principal of any IOLTA account. It is the intent of the Legislature
26 that the State Bar develop policies so that eligible institutions not
27 incur uncompensated administrative costs in adapting their systems
28 to comply with the provisions of ~~this section~~ *Assembly Bill 1723*
29 *of the 2007–08 Regular Session* or in making investment products
30 available to IOLTA members.

31 (d) The eligible institution shall be directed to do all of the
32 following:

33 (1) To remit interest or dividends on the IOLTA account, less
34 reasonable fees, to the State Bar, at least quarterly.

35 (2) To transmit to the State Bar with each remittance a statement
36 showing the name of the attorney or law firm for whom the
37 remittance is sent, for each account the rate of interest applied or
38 dividend paid, the amount and type of fees deducted, if any, and
39 the average balance for each account for each month of the period
40 for which the report is made.

1 (3) To transmit to the attorney or law firm customer at the same
2 time a report showing the amount paid to the State Bar for that
3 period, the rate of interest or dividend applied, the amount of fees
4 and service charges deducted, if any, and the average daily account
5 balance for each month of the period for which the report is made.

6 (e) An eligible institution has no affirmative duty to offer or
7 make investment products available to IOLTA customers.
8 However, if an eligible institution offers or makes investment
9 products available to non-IOLTA customers, in order to remain
10 an IOLTA eligible institution, it shall make those products available
11 to IOLTA customers or pay an interest rate on the IOLTA deposit
12 account that is comparable to the rate of return or the dividends
13 generally paid on that investment product for similar customers
14 meeting the same minimum balance and other requirements
15 applicable to the investment product. If the eligible institution
16 elects to pay that higher interest rate, the eligible institution may
17 subject the IOLTA deposit account to equivalent fees and charges
18 assessable against the investment product.

19 SEC. 4. Section 6213 of the Business and Professions Code is
20 amended to read:

21 6213. As used in this article:

22 (a) “Qualified legal services project” means either of the
23 following:

24 (1) A nonprofit project incorporated and operated exclusively
25 in California which provides as its primary purpose and function
26 legal services without charge to indigent persons and which has
27 quality control procedures approved by the State Bar of California.

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

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

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

37 (b) “Qualified support center” means an incorporated nonprofit
38 legal services center, which has as its primary purpose and function
39 the provision of legal training, legal technical assistance, or
40 advocacy support without charge and which actually provides

1 through an office in California a significant level of legal training,
2 legal technical assistance, or advocacy support without charge to
3 qualified legal services projects on a statewide basis in California.

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

6 (d) “Indigent person” means a person whose income is (1) 125
7 percent or less of the current poverty threshold established by the
8 United States Office of Management and Budget, or (2) who is
9 eligible for Supplemental Security Income or free services under
10 the Older Americans Act or Developmentally Disabled Assistance
11 Act. With regard to a project which provides free services of
12 attorneys in private practice without compensation, “indigent
13 person” also means a person whose income is 75 percent or less
14 of the maximum levels of income for lower income households
15 as defined in Section 50079.5 of the Health and Safety Code. For
16 the purpose of this subdivision, the income of a person who is
17 disabled shall be determined after deducting the costs of medical
18 and other disability-related special expenses.

19 (e) “Fee generating case” means any case or matter that, if
20 undertaken on behalf of an indigent person by an attorney in private
21 practice, reasonably may be expected to result in payment of a fee
22 for legal services from an award to a client, from public funds, or
23 from the opposing party. A case shall not be considered fee
24 generating if adequate representation is unavailable and any of the
25 following circumstances exist:

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

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

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

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

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

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

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

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

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

15 (g) “Older Americans Act” means the Older Americans Act of
16 1965, as amended (Public Law 89-73; 42 U.S.C. Sec. 3001 et seq.).

17 (h) “Developmentally Disabled Assistance Act” means the
18 Developmentally Disabled Assistance and Bill of Rights Act of
19 1975, as amended (Public Law 94-103; 42 U.S.C. Sec. 6001 et
20 seq.).

21 (i) “Supplemental security income recipient” means an
22 individual receiving or eligible to receive payments under Title
23 XVI of the federal Social Security Act, or payments under Chapter
24 3 (commencing with Section 12000) of Part 3 of Division 9 of the
25 Welfare and Institutions Code.

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

27 (1) An interest-bearing checking account.

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

31 (3) Any other investment product authorized by California
32 Supreme Court rule or order and established and maintained
33 pursuant to subdivision (a) of Section 6211.

34 A daily financial institution repurchase agreement shall be fully
35 collateralized by United States Government Securities or other
36 comparably conservative debt securities, and may be established
37 only with any eligible institution that is “well-capitalized” or
38 “adequately capitalized” as those terms are defined by applicable
39 federal statutes and regulations. An open-end money-market fund
40 shall be invested solely in United States Government Securities

1 or repurchase agreements fully collateralized by United States
2 Government Securities, shall hold itself out as a “money-market
3 fund” as that term is defined by federal statutes and regulations
4 under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1
5 et seq.), and, at that time of the investment, shall have total assets
6 of at least two hundred fifty million dollars (\$250,000,000).

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

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