

ASSEMBLY BILL

No. 1856

Introduced by Assembly Member Wilk

February 19, 2014

An act to amend Sections 995.710, 995.720, 995.740, and 995.760 of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1856, as introduced, Wilk. Deposit in lieu of bond.

Existing law allows, among other things, bearer bonds and bearer notes of the United States or this state and certificates of deposit payable, not exceeding the federally insured amount, issued by banks or savings associations authorized to do business in this state and insured by the Federal Deposit Insurance Corporation to be deposit with the officer, as defined, in lieu of a bond required by an action or proceeding, except as provided.

This bill would allow all bonds and notes of the United States or the State of California and cashiers checks, payable to the officer, to be deposit with the officer in lieu of a bond, as specified.

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 995.710 of the Code of Civil Procedure
- 2 is amended to read:
- 3 995.710. (a) Except as provided in subdivision (e) or to the
- 4 extent the statute providing for a bond precludes a deposit in lieu

1 of bond or limits the form of deposit, the principal may, instead
2 of giving a bond, deposit with the officer any of the following:

3 (1) Lawful money of the United States. The money shall be
4 maintained by the officer in an interest-bearing trust account.

5 (2) ~~Bearer bonds or bearer notes~~ *Bonds or notes, including*
6 *bearer bonds and bearer notes*, of the United States or the State
7 of California. *The deposit of a bond or note pursuant to this section*
8 *shall be accomplished by filing with the court, and serving upon*
9 *all parties and the appropriate officer of the bank holding the bond*
10 *or note, instructions executed by the person or entity holding title*
11 *to the bond or note that the county treasurer of the county where*
12 *the judgment was entered is the custodian of that account for the*
13 *purpose of staying enforcement of the judgment, and that the title*
14 *holder assigns to the Treasurer the right to collect, sell, or*
15 *otherwise apply the bond or note to enforce the judgment debtor's*
16 *liability pursuant to Section 995.760.*

17 (3) Certificates of deposit payable to the officer, not exceeding
18 the federally insured amount, *or a cashier's check made payable*
19 *to the officer*, issued by banks or savings associations authorized
20 to do business in this state and insured by the Federal Deposit
21 Insurance Corporation. *A cashier's check shall be deposited by*
22 *the officer in an interest-bearing trust account and cleared by the*
23 *bank.*

24 (4) Savings accounts assigned to the officer, not exceeding the
25 federally insured amount, together with evidence of the deposit in
26 the savings accounts with banks authorized to do business in this
27 state and insured by the Federal Deposit Insurance Corporation.

28 (5) Investment certificates or share accounts assigned to the
29 officer, not exceeding the federally insured amount, issued by
30 savings associations authorized to do business in this state and
31 insured by the Federal Deposit Insurance Corporation.

32 (6) Certificates for funds or share accounts assigned to the
33 officer, not exceeding the guaranteed amount, issued by a credit
34 union, as defined in Section 14002 of the Financial Code, whose
35 share deposits are guaranteed by the National Credit Union
36 Administration or guaranteed by any other agency approved by
37 the Department of Financial Institutions.

38 (b) The deposit shall be in an amount or have a face value, or,
39 in the case of ~~bearer bonds or bearer notes~~, have a market value,
40 equal to or in excess of the amount that would be required to be

1 secured by the bond if the bond were given by an admitted surety
2 insurer. Notwithstanding any other provision of this chapter, in
3 the case of a deposit of ~~bearer~~ bonds or ~~bearer~~ notes other than in
4 an action or proceeding, the officer may, in the officer's discretion,
5 require that the amount of the deposit be determined not by the
6 market value of the bonds or notes but by a formula based on the
7 principal amount of the bonds or notes.

8 (c) The deposit shall be accompanied by an agreement executed
9 by the principal authorizing the officer to collect, sell, or otherwise
10 apply the deposit to enforce the liability of the principal on the
11 deposit. The agreement shall include the address at which the
12 principal may be served with notices, papers, and other documents
13 under this chapter.

14 (d) The officer may prescribe terms and conditions to implement
15 this section.

16 (e) This section ~~may does not be utilized after January 1, 1999,~~
17 ~~for apply to~~ deposits with the Secretary of State. ~~Any principal~~
18 ~~who made a deposit with the Secretary of State pursuant to this~~
19 ~~section prior to January 1, 1999, may continue to utilize that deposit~~
20 ~~in lieu of a bond pursuant to this section and the statute that~~
21 ~~prescribes a bond; however, the deposit shall not be renewable~~
22 ~~pursuant to this section.~~

23 SEC. 2. Section 995.720 of the Code of Civil Procedure is
24 amended to read:

25 995.720. (a) The market value of *bonds or notes, including*
26 ~~bearer bonds or and bearer notes notes~~, shall be agreed upon by
27 stipulation of the principal and beneficiary or, if the bonds or notes
28 are given in an action or proceeding and the principal and
29 beneficiary are unable to agree, the market value shall be
30 determined by court order in the manner prescribed in this section.
31 A certified copy of the stipulation or court order shall be delivered
32 to the officer at the time of the deposit of the bonds or notes.

33 (b) If the bonds or notes are given in an action or proceeding,
34 the principal may file a written application with the court to
35 determine the market value of the bonds or notes. The application
36 shall be served upon the beneficiary and proof of service shall be
37 filed with the application. The application shall contain all of the
38 following:

39 (1) A specific description of the bonds or notes.

1 (2) A statement of the current market value of the bonds or notes
2 as of the date of the filing of the application.

3 (3) A statement of the amount of the bonds or notes that the
4 principal believes would be equal to the required amount of the
5 deposit.

6 (c) The application pursuant to subdivision (b) shall be heard
7 by the court not less than five days or more than 10 days after
8 service of the application. If at the time of the hearing no objection
9 is made to the current market value of the bonds or notes alleged
10 in the application, the court shall fix the amount of the bonds or
11 notes on the basis of the market value alleged in the application.
12 If the beneficiary contends that the current market value of the
13 bonds or notes is less than alleged in the application, the principal
14 shall offer evidence in support of the application, and the
15 beneficiary may offer evidence in opposition. At the conclusion
16 of the hearing, the court shall make an order determining the market
17 value of the bonds or notes and shall fix and determine the amount
18 of the bonds or notes to be deposited by the principal.

19 SEC. 3. Section 995.740 of the Code of Civil Procedure is
20 amended to read:

21 995.740. If no proceedings are pending to enforce the liability
22 of the principal on the deposit, the officer shall:

23 (a) Pay quarterly, on demand, any interest on the deposit, when
24 earned in accordance with the terms of the account or certificate,
25 to the principal.

26 (b) Deliver to the principal, on demand, any interest coupons
27 attached to *bonds or notes, including* bearer bonds ~~or~~ and bearer
28 ~~notes notes~~, as the interest coupons become due and payable, or
29 pay annually any interest payable on the bonds or notes.

30 SEC. 4. Section 995.760 of the Code of Civil Procedure is
31 amended to read:

32 995.760. (a) If the principal does not pay the amount of the
33 liability on the deposit within the time prescribed in Section
34 995.750, the deposit shall be collected, sold, or otherwise applied
35 to the liability upon order of the court that entered the judgment
36 of liability, made upon five days' notice to the parties.

37 (b) ~~Bearer bonds or notes, including bearer bonds or~~ and bearer
38 ~~notes notes~~, without a prevailing market price shall be sold at
39 public auction. Notice of sale shall be served on the principal.
40 ~~Bearer bonds or bearer~~ Bonds or notes having a prevailing market

1 price may be sold at private sale at a price not lower than the
2 prevailing market price.

3 (c) The deposit shall be distributed in the following order:

4 (1) First, to pay the cost of collection, sale, or other application
5 of the deposit.

6 (2) Second, to pay the judgment of liability of the principal on
7 the deposit.

8 (3) Third, the remainder, if any, shall be returned to the
9 principal.

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