

AMENDED IN ASSEMBLY MARCH 19, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2567**

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**Introduced by Assembly Member Daly**

February 21, 2014

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An act to amend Sections 8482 and 10453 of, to add Section ~~8480.5~~ 8482.5 to, and to repeal and add Section 8481 of, the Probate Code, relating to decedents.

LEGISLATIVE COUNSEL'S DIGEST

AB 2567, as amended, Daly. Decedents' estates: personal representative: bond.

(1) Existing law requires every person appointed as a personal representative of a decedent's estate to give a bond conditioned on the faithful execution of the duties of the office. Existing law authorizes a waiver of this bond in certain circumstances and also authorizes the court to fix the amount of the bond not to exceed a specified sum.

The bill would, with respect to the above-described bond, require a court to make a good-faith *cause* determination that the beneficiaries and creditors of the estate will not suffer harm as a result of the waiver of a bond or reduction of the bond amount before authorizing this waiver or reduction. This bill would also require a person appointed as a personal representative to give a cost bond approved by the court to be used to satisfy the remainder of an amount awarded to a contestant of an account, as specified.

The bill would require, when a personal representative has actual or constructive knowledge of facts indicating that the amount of a bond given is less than the amount fixed, the personal representative and, if any, the attorney, to make an ex parte application for an order to increase

the bond, as specified. The bill would also require, if an additional amount is required for the bond, an order approving an account to be conditioned on the filing of the additional bond amount.

(2) The Independent Administration of Estates Act governs the independent administration of a decedent’s estate and requires, if a personal representative is otherwise required to file a bond, a court, in its discretion, to fix the amount of this bond.

This bill would remove the discretion of the court to fix the bond amount.

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 8480.5 is added to the Probate Code, to~~  
2 ~~read:~~

3 ~~8480.5. (a) In addition to the bond required pursuant to Section~~  
4 ~~8480, a person appointed as a personal representative shall give a~~  
5 ~~cost bond approved by the court to be used to satisfy the remainder~~  
6 ~~of an amount that may be awarded to a contestant of an account~~  
7 ~~pursuant to subdivision (b) of Section 11003 after a final~~  
8 ~~determination that the opposition to the contest was without~~  
9 ~~reasonable cause and in bad faith. The amount of this cost bond~~  
10 ~~shall be no less than twelve thousand dollars (\$12,000) nor greater~~  
11 ~~than fifty thousand dollars (\$50,000) and shall be based upon all~~  
12 ~~of the following:~~

- 13 ~~(1) The size of the estate.~~
- 14 ~~(2) The nature and number of the assets.~~
- 15 ~~(3) The anticipated complexity of the accounting.~~
- 16 ~~(b) When a personal representative has actual or constructive~~  
17 ~~knowledge of facts indicating that the amount of the bond given~~  
18 ~~is less than the amount fixed pursuant to subdivision (a), the~~  
19 ~~personal representative and, if any, the attorney, shall make an ex~~  
20 ~~parte application for an order to increase the bond pursuant to~~  
21 ~~subdivision (a). If an additional amount is required, an order~~  
22 ~~approving an account shall be conditioned on the filing of the~~  
23 ~~additional bond amount.~~

24 ~~SEC. 2.~~

25 SECTION 1. Section 8481 of the Probate Code is repealed.

1 ~~SEC. 3.~~

2 *SEC. 2.* Section 8481 is added to the Probate Code, to read:

3 8481. ~~(a)~~—The court may waive the filing of a bond described  
4 in Section 8480 or, notwithstanding ~~Section~~ *Sections* 8482 and  
5 8482.5, reduce the amount of this bond only if both of the following  
6 conditions are met:

7 ~~(1)~~

8 (a) The will waives the requirement of a bond or, unless the  
9 will requires a bond, all beneficiaries waive in writing the  
10 requirement of a bond and the written waivers are attached to the  
11 petition for appointment of a personal representative.

12 ~~(2)~~

13 (b) The court makes a good cause determination that the  
14 beneficiaries and creditors of the estate will not suffer harm as a  
15 result of the waiver or reduction of the bond amount. For purposes  
16 of this subdivision, the filing of a bond in another or a prior  
17 proceeding by the personal representative shall not, by itself,  
18 establish a basis for good cause.

19 ~~(b) Notwithstanding subdivision (a), the court may reduce the~~  
20 ~~amount of a bond if the decedent had sufficient capacity to waive~~  
21 ~~the filing of a bond and waived it for a trustee or named successor~~  
22 ~~trustee.~~

23 ~~SEC. 4.~~

24 *SEC. 3.* Section 8482 of the Probate Code is amended to read:

25 8482. (a) The court shall fix the amount of the bond required  
26 pursuant to Section 8480 at not more than the sum of:

27 (1) The estimated value of the personal property.

28 (2) The probable annual gross income of the estate.

29 (3) If independent administration is granted as to real property,  
30 the estimated value of the decedent’s interest in the real property.

31 (b) Notwithstanding subdivision (a), if the bond is given by an  
32 admitted surety insurer, the court may establish a fixed minimum  
33 amount for the bond, based on the minimum premium required by  
34 the admitted surety insurer.

35 (c) If the bond is given by personal sureties, the amount of the  
36 bond shall be twice the amount fixed by the court under subdivision  
37 (a).

38 (d) Before confirming a sale of real property the court shall  
39 require such additional bond as may be proper, not exceeding the

1 maximum requirements of this section, treating the expected  
2 proceeds of the sale as personal property.

3 (e) When a personal representative has actual or constructive  
4 knowledge of facts indicating that the amount of the bond given  
5 is less than the amount fixed pursuant to subdivision (a), the  
6 personal representative and, if any, the attorney, shall make an ex  
7 parte application for an order to increase the bond pursuant to  
8 subdivision (a). If an additional amount is required, an order  
9 approving an account shall be conditioned on the filing of the  
10 additional bond amount.

11 SEC. 4. Section 8482.5 is added to the Probate Code, to read:

12 8482.5. (a) The bond required pursuant to Section 8480 shall  
13 include, in addition to coverage for protection of estate assets in  
14 the amount set forth in Section 8482, an amount for recovery of  
15 any attorney’s fees and costs awarded pursuant to subdivision (b)  
16 of Section 11003 for a successful contest of accounting resulting  
17 in a surcharge against the personal representative to be calculated  
18 as follows:

19 (1) Ten percent of the amount that does not exceed five hundred  
20 thousand dollars (\$500,000), of all of the following:

- 21 (A) The estimated value of the personal property of the estate.
- 22 (B) The probable annual gross income of the estate.

23 (C) If independent administration is granted as to real property,  
24 the estimated value of the decedent’s interest in the real property.

25 (2) Twelve percent of the amount greater than five hundred  
26 thousand dollars (\$500,000), but not exceeding one million dollars  
27 (\$1,000,000), of the property and income described in paragraph  
28 (1).

29 (3) Two percent of the amount greater than one million dollars  
30 (\$1,000,000), of the property and income described in paragraph  
31 (1).

32 (b) When a personal representative has actual or constructive  
33 knowledge of facts indicating that the amount of the bond given  
34 is less than the amount fixed pursuant to subdivision (a), the  
35 personal representative and, if any, the attorney, shall make an  
36 ex parte application for an order to increase the bond pursuant  
37 to subdivision (a). If an additional amount is required, an order  
38 approving an account shall be conditioned on the filing of the  
39 additional bond amount.

40 SEC. 5. Section 10453 of the Probate Code is amended to read:

1 10453. (a) If the personal representative is otherwise required  
2 to file a bond and has full authority, the court shall fix the amount  
3 of the bond at not more than the estimated value of the personal  
4 property, the estimated value of the decedent's interest in the real  
5 property authorized to be sold under this part, and the probable  
6 annual gross income of the estate, or, if the bond is to be given by  
7 personal sureties, at not less than twice that amount.

8 (b) If the personal representative is otherwise required to file a  
9 bond and has limited authority, the court shall fix the amount of  
10 the bond at not more than the estimated value of the personal  
11 property and the probable annual gross income of the estate, or, if  
12 the bond is to be given by personal sureties, at not less than twice  
13 that amount.