

Date of Hearing: April 7, 2014

ASSEMBLY COMMITTEE ON BANKING AND FINANCE  
Roger Dickinson, Chair  
AB 1856 (Wilk) – As Amended: March 20, 2014

SUBJECT: Deposit in lieu of bond.

SUMMARY: Allows cashier's checks to be deposited with an officer in lieu of an appeal bond. Specifically, this bill:

- 1) Provides that the officer shall maintain the funds deposited from the cashier's check in an interest-bearing trust account.
- 2) Clarifies the procedure when an officer deposits bonds or notes.
- 3) Makes other technical clarifications.

EXISTING LAW

- 1) Defines "officer" as a sheriff, marshal, clerk of court, judge or magistrate (if there is no clerk), board, commission, department, or other public official or entity to whom the bond is given or with whom a copy of the bond is filed or who is required to determine the sufficiency of the sureties or to approve the bond. [Code of Civil Procedure, Section 995.160]
- 2) Defines "principal" as a person who gives a bond. [Code of Civil Procedure, Section 995.170]
- 3) Provides that the principal may, instead of giving a bond, deposit with the officer any of the following:
  - a) Lawful money of the United States.
  - b) Bearer bonds or bearer notes of the United States or the State of California.
  - c) Certificates of deposit payable to the officer.
  - d) Savings accounts assigned to the officer.
  - e) Investment certificates or share accounts assigned to the officer.
  - f) Certificates for funds or share accounts assigned to the officer. [Code of Civil Procedure, Section 995.710]

FISCAL EFFECT: Unknown.

COMMENTS:

According to the sponsor, the Conference of California Bar Associations, AB 1856 updates the list of financial instruments that may be deposited with the court in lieu of an appeal bond to stay execution of a judgment pending appeal. The purpose of the bill is to update the list of acceptable forms of security to reflect current instruments of unquestioned value and thereby to eliminate the need to expend the litigants' and court's time and resources on unnecessary motions to have these forms of security approved.

AB 1856 updates existing law concerning the method by which a party can stay enforcement of a money judgment while an appeal is pending. This measure is important to ensure that the contested funds are kept secure for whichever side prevails after litigation finally concludes. Updating existing law to allow the acceptance of more modern types of collateral will presumably streamline court processes and lower transaction costs for litigants involved in money judgment appeals.

BACKGROUND

The Code of Civil Procedure, California's Bond and Undertaking Law, lists qualifying deposits, which include: cash, bearer bonds, and certificates of deposit. The Code of Civil Procedure, section 995.710 has not been updated since 1982. California's Bond and Undertaking Law allows litigants to stay execution proceedings while they exercise their right to appellate review of adverse money judgments. The statutes protect the interest of judgment creditors by requiring adequate security for the payment of a money judgment in the event it is affirmed on appeal. Because this code section does not include cashier's checks and bonds, judgment debtors who wish to deposit any of these appeals bond substitutes must make special applications to the court by motion.

Existing law authorizes the deposit of bearer bonds or bearer notes but the U.S. Treasury and the states ceased issuing bearer instruments in 1982. (26 C.F.R. 5f 103-1) While AB 1856 will not prohibit the use of bearer bonds for a deposit in lieu of bond, the bill will allow litigants to use U.S. Treasury and the state's bonds.

In addition, AB 1856 allows litigants to make a deposit in lieu of bond using a cashier's check. Existing law allows litigants to deposit cash and certificates of deposit in lieu of an appeal bond. While clerks sometimes accept cashier's checks, clerks often refuse to accept them absent a court order because they are not included in the Code of Civil Procedure.

REGISTERED SUPPORT / OPPOSITION:

Support

Conference of California Bar Associations (Sponsor)  
Appellate Courts Section of the Los Angeles County Bar Association  
California Appellate Law Group

Opposition

None on file

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