

STAFF DRAFT

RECOMMENDATION

relating to

CONFORMING CHANGES TO THE BOND AND UNDERTAKING LAW

The Bond and Undertaking Law¹ was enacted upon recommendation of the California Law Revision Commission² by Chapter ___ of the Statutes of 1982. Conforming changes to the Bond and Undertaking Law were enacted by Chapter 517 of the Statutes of 1982. However, Chapter 517 also provides that other measures enacted at the 1982 legislative session that affect the same statutes as Chapter 517 prevail over Chapter 517.³ This provision makes it necessary to reenact the portions of Chapter 517 that were superseded by other measures. This would be achieved by enactment of the following measure:

An act to amend Sections 5122 and 7398 of the Business and Professions Code, to amend Sections 166, 488.465, 700.160, 720.760, 720.770, and 1166a of, and to repeal Sections 720.710, 720.720, 720.730, 720.740, 720.750, 720.780, and 720.790 of, the Code of Civil Procedure, to amend Section 25100 of the Corporations Code, to amend Section 26855.3 of, and to repeal Section 1587 of, the Government Code, to amend Section 1448 of the Penal Code, to amend Section 541 of the Probate Code, to amend Sections 5101, 20398, 20413, 20426, 20458, 20483, 20569, and 20589 of the Public Contract Code, and to amend Sections 11301.5 and 11713 of the Vehicle Code, relating to statutory bonds and undertakings.

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

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1. Code Civ. Proc. §§ 995.010-996.560.
 2. Recommendation Relating to Statutory Bonds and Undertakings, 16 Cal. L. Revision Comm'n Reports 501 (1982).
 3. 1982 Cal. Stats. ch. 517, § 416.

SEC. ____ . Section 5122 of the Business and Professions Code is amended to read:

5122. Whenever in the judgment of the board, or with its approval any administrative committee, any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, an offense against this chapter, the board may make application to the appropriate court for an order enjoining the acts or practices, and upon showing by the board that the person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by the court ~~without bond~~ .

Comment. Section 5122 is amended to delete a provision duplicated in the Bond and Undertaking Law. See Code Civ. Proc. § 995.220 (bond not required of public entity or officer).

SEC. ____ . Section 7398 of the Business and Professions Code is amended to read:

7398. (a) Every school shall post with the board a ~~good and sufficient~~ surety bond executed by ~~the applicant as principal and by a surety company as surety~~ an admitted surety insurer in the amount of five thousand dollars (\$5,000).

(b) The bond shall be in the form approved by the board and shall be conditioned upon compliance with the provisions of this chapter and upon faithful compliance with the terms and conditions of any and all contracts, verbal or written, made by the school to furnish instruction to any person. The bond shall be to the State of California in favor of every person who pays or deposits any money with the school as payment for any instruction. Every bond shall continue in force and effect until notice of termination is given by registered mail to the board and every bond shall set forth this fact.

~~Any person claiming to be injured or damaged by any act of the school may maintain an action on the bond against the school and the surety named therein, or either of them for refund of tuition paid and any~~

(c) A judgment against the principal or surety in any ~~such~~ action to enforce the liability on the bond shall include the costs thereof and those incident to the bringing of the action, including a reasonable attorney fee. ~~The aggregate liability of the surety to all such persons shall not, however, exceed the sum of the bond.~~

~~The failure of a school to maintain a bond in force and effect at all times shall be grounds for the suspension of the school's license.~~

Comment. Section 7398 is amended to delete provisions duplicated in the Bond and Undertaking Law. See Code Civ. Proc. §§ 995.120 ("admitted surety insurer" defined), 996.020 (insufficient bond), 996.430 (action to enforce liability), and 996.470 (limitation on liability of surety).

[Note: SB 1975 not yet chaptered.]

28041

SEC. _____. Section 166 of the Code of Civil Procedure is amended to read:

166. (a) The judge or judges of the superior, municipal and justice courts may, at chambers, in the matters within the jurisdiction of their respective courts:

(1) Grant all orders and writs which are usually granted in the first instance upon an ex parte application, and ~~may, at chambers, hear and dispose of such orders and writs ; and may also, at chambers, appoint .~~

(2) Appoint appraisers, receive inventories and accounts to be filed, suspend the powers of executors, administrators, guardians, or conservators in the cases allowed by law, grant special letters of administration and letters of temporary guardianship or conservatorship, approve claims ~~and bonds~~ , and direct the issuance from the court of all writs and process necessary in the exercise of their powers in matters of probate.

~~(2)~~ (3) Hear and determine all motions made pursuant to Section 657 and 663.

~~(3)~~ (4) Hear and determine all uncontested actions, proceedings, demurrers, motions, petitions, applications, and other matters pending before the court other than actions for dissolution of marriage, for legal separation, or for a judgment of nullity of the marriage, and

except also applications for confirmation of sale of real property in probate proceedings.

←4→ (5) Hear and determine motions to tax costs of enforcing a judgment.

(6) Approve bonds and undertakings.

(b) A judge may, out of court, anywhere in the state, exercise all the powers and perform all the functions and duties conferred upon a judge as contradistinguished from the court, or which a judge may exercise or perform at chambers.

Comment. Section 166 is amended to authorize judges at chambers to approve bonds and undertakings. Formerly approval of probate bonds only at chambers was authorized. The other changes in Section 166 are technical.

4630

SEC. ____ . Section 488.465 of the Code of Civil Procedure is amended to read:

488.465. (a) The provisions of this section apply in addition to the provisions of Sections 488.455 and 488.460 if any of the following property is attached:

(1) A deposit account standing in the name of a third person or in the names of both the defendant and a third person.

(2) Property in a safe deposit box standing in the name of a third person or in the names of both the defendant and a third person.

(b) The plaintiff shall provide, and the levying officer shall deliver to the financial institution at the time of levy, an undertaking given by ~~a corporate surety authorized to execute the undertaking by Section 1056~~ an admitted surety insurer . The undertaking shall be for not less than twice the amount of the attachment or, if a lesser amount in a deposit account is sought to be levied upon, not less than twice the lesser amount. The undertaking shall indemnify any third person rightfully entitled to the property against actual damage by reason of the attachment of the property and shall assure to the third person the return of the property upon proof of the person's right thereto. The undertaking need not name the third person specifically but may refer to the third person generally in the same manner as in this subdivision. If the provisions of this subdivision are not satisfied, the attachment is ineffective and the financial institution shall not comply with the requirements of this section or with the attachment.

(c) Upon delivery of the undertaking to the financial institution, the financial institution shall immediately mail or deliver a notice of the delivery of the undertaking to the third person in whose name the deposit account or safe deposit box stands. If mailed, the notice shall be sent by registered or certified mail addressed to the person's last address known to the financial institution. The financial institution shall deliver the undertaking as directed by the third person.

(d) Notwithstanding Article 4 (commencing with Section 488.600), from the time of levy and delivery of the undertaking to the financial institution until 15 days after the notice is mailed or delivered under subdivision (c) if no objection to the undertaking is made or, if such objection is made, until the court determines that the undertaking is sufficient, the financial institution shall not do any of the following:

(1) Honor a check or other order for the payment of money drawn against, or pay a withdrawal from, the deposit account that would reduce the deposit account to less than the amount attached. For the purposes of this paragraph, in determining the amount of the deposit account, the financial institution shall not include the amount of items deposited to the credit of the deposit account that are in the process of being collected.

(2) Permit the removal of any of the contents of the safe deposit box except pursuant to the writ.

(e) The financial institution is not liable to any person for any of the following during the period prescribed in subdivision (d):

(1) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account where the nonpayment is pursuant to the requirements of subdivision (d).

(2) Refusal to pay a withdrawal from the deposit account where the refusal is pursuant to the requirements of subdivision (d).

(3) Refusal to permit access to the safe deposit box by the person in whose name it stands.

(4) Removal of any of the contents of the safe deposit box pursuant to the attachment.

~~(f) An objection to the undertaking may be made by any person claiming to be rightfully entitled to the property attached. The objection shall be made in the manner provided by Article 4 (commencing with Section 489.010) of Chapter 9.~~

~~(g)~~ (f) Upon the expiration of the period prescribed in subdivision (d), the financial institution shall comply with the attachment and Sections 488.455 and 488.460 apply.

Comment. Subdivision (b) of Section 488.465 is amended for consistency with the Bond and Undertaking Law. See Section 995.120 ("admitted surety insurer" defined). The substance of former subdivision (f) is continued in Sections 995.910-995.960 (objections to undertakings).

32806

SEC. ____ . Section 700.160 of the Code of Civil Procedure is amended to read:

700.160. (a) The provisions of this section apply in addition to the provisions of Sections 700.140 and 700.150 if any of the following property is levied upon:

(1) A deposit account standing in the name of a third person or in the names of both the judgment debtor and a third person.

(2) Property in a safe deposit box standing in the name of a third person or in the names of both the judgment debtor and a third person.

(b) The judgment creditor shall provide, and the levying officer shall deliver to the financial institution at the time of levy, an undertaking given by ~~a corporate surety authorized to execute the undertaking by Section 1056~~ an admitted surety insurer . The undertaking shall be for not less than twice the amount of the judgment or, if a lesser amount in a deposit account is sought to be levied upon, not less than twice the lesser amount. The undertaking shall indemnify any third person rightfully entitled to the property against actual damage by reason of the levy on the property and shall assure to the third person the return of the property upon proof of the person's right thereto. The undertaking need not name the third person specifically but may refer to the third person generally in the same manner as in this subdivision. If the provisions of this subdivision are not satisfied, the levy is ineffective and the financial institution shall not comply with the requirements of this section or with the levy.

(c) Upon delivery of the undertaking to the financial institution, the financial institution shall immediately mail or deliver a notice of the delivery of the undertaking to the third person in whose name the deposit account or safe deposit box stands. If mailed, the notice shall be sent by registered or certified mail addressed to the person's last

address known to the financial institution. The financial institution shall deliver the undertaking as directed by the third person.

(d) Notwithstanding Article 5 (commencing with Section 701.010), from the time of levy and the delivery of the undertaking to the financial institution until 15 days after the notice is mailed or delivered under subdivision (c) if no objection to the undertaking is made or, if such objection is made, until the court determines that the undertaking is sufficient, the financial institution shall not do any of the following:

(1) Honor a check or other order for the payment of money drawn against, or pay a withdrawal from, the deposit account that would reduce the deposit account to less than the amount levied upon. For the purposes of this paragraph, in determining the amount of the deposit account, the financial institution shall not include the amount of items deposited to the credit of the deposit account that are in the process of being collected.

(2) Permit the removal of any of the contents of the safe deposit box except pursuant to the writ.

(e) The financial institution is not liable to any person for any of the following during the period prescribed in subdivision (d):

(1) Nonpayment of a check or other order for the payment of money drawn or presented against the deposit account where such nonpayment is pursuant to the requirements of subdivision (d).

(2) Refusal to pay a withdrawal from the deposit account where such refusal is pursuant to the requirements of subdivision (d).

(3) Refusal to permit access to the safe deposit box by the person in whose name it stands.

(4) Removal of any of the contents of the safe deposit box pursuant to the levy.

~~(f) An objection to the undertaking may be made by any person claiming to be rightfully entitled to the property levied upon. The objection shall be made in the manner provided by Chapter 7 (commencing with Section 720-740) of Division 4.~~

~~(g)~~ (f) Upon the expiration of the period prescribed in subdivision (d), the financial institution shall comply with the levy and Sections 700.140 and 700.150 apply.

Comment. Section 700.160 is amended for consistency with the Bond and Undertaking Law. See Section 995.120 ("admitted surety insurer" defined). The substance of former subdivision (f) is continued in Sections 995.910-995.960 (objections to undertakings).

28737

SEC. ____ . Section 720.710 of the Code of Civil Procedure is repealed.
~~720.710. The provisions of this chapter apply to undertakings
given pursuant to this division.~~

Comment. Former Section 720.710 is superseded by Section 995.020
(application of bond and undertaking chapter).

32805

SEC. ____ . Section 720.720 of the Code of Civil Procedure is repealed.
~~720.720. As used in this chapter:~~
~~(a) "Beneficiary" means the person to be benefited by an undertaking.~~
~~(b) "Principal" means the person who files an undertaking.~~

Comment. The substance of former Section 720.720 is continued in
Sections 995.130 ("beneficiary" defined) and 995.170 ("principal" defined).

32800

SEC. ____ . Section 720.730 of the Code of Civil Procedure is repealed.
~~720.730. An undertaking shall be executed by two or more personal
sureties or by one corporate surety possessing a certificate of authority
from the Insurance Commissioner authorizing it to write surety insurance
defined in Section 105 of the Insurance Code.~~

Comment. The substance of former Section 720.730 is continued in
Sections 995.120 ("admitted surety insurer" defined) and 995.310 (sureties
on undertaking).

28731

SEC. ____ . Section 720.740 of the Code of Civil Procedure is
repealed.

~~720.740. If the amount of an undertaking depends upon the value
of property or an interest therein, the undertaking shall include
the principal's estimate of the market value of the property or interest.~~

Comment. The substance of former Section 720.740 is continued in
Section 995.320 (contents of undertaking).

SEC. ____ . Section 720.750 of the Code of Civil Procedure is repealed.
~~720.750. Except as otherwise provided by statute, an undertaking is effective upon filing.~~

Comment. The substance of former Section 720.750 is continued in Section 995.420 (time undertaking becomes effective).

SEC. ____ . Section 720.760 of the Code of Civil Procedure is amended to read:

720.760. ~~(a) The beneficiary may object to an undertaking on either or both of the following grounds:~~

~~(1) The sureties are insufficient.~~

~~(2) The amount of the undertaking is insufficient.~~

~~(b) The objection to an undertaking shall be made by noticed motion within 10 days after service of a copy of the undertaking on the beneficiary. If no objection is made within such time, the beneficiary is deemed to have waived any objections. The notice of motion shall specify the precise ground for the objection and a copy of the notice of motion shall be served on the principal and a copy A copy of a notice of motion objecting to an undertaking shall be filed with the levying officer. Service shall be made personally or by mail.~~

~~(c) If the objection is made on the ground that the market value of the property on which the amount of the undertaking depends exceeds the value estimated in the undertaking, the notice of motion shall state the beneficiary's estimate of the market value of the property.~~

Comment. Section 720.760 is amended to delete provisions duplicated in the Bond and Undertaking Law. See Sections 995.920 (grounds for objection), 995.930 (manner of making objection), 995.030 (manner of service), and 995.940 (objection to sufficiency of undertaking based on market value).

SEC. ____ . Section 720.770 of the Code of Civil Procedure is amended to read:

720.770. (a) Unless the parties otherwise agree, the hearing on an objection to an undertaking shall be held not less than 10 nor more than 15 days after service of the notice of motion.

~~(b) The hearing shall be conducted in such manner as the court determines is proper. At the hearing, witnesses may be required to attend, and evidence may be procured and introduced, in the same manner as in the trial of a civil case. The court may appoint one or more disinterested persons to appraise property for the purpose of ascertaining its value.~~

~~(c) If the court determines that the undertaking is insufficient, the court shall specify in what respect it is insufficient and shall order that an undertaking with sufficient sureties and in a sufficient amount be filed within five days. If the order is not complied with, all rights obtained by filing the original undertaking immediately cease.~~

~~(d) If the court determines that an undertaking is insufficient, the undertaking remains in effect until an undertaking with sufficient sureties and in a sufficient amount is filed in its place.~~

~~(e) If the court determines that an undertaking is sufficient, no future objection to the undertaking may be made except upon a showing of changed circumstances.~~

~~(f) If the beneficiary objects to an undertaking on the ground that the amount is insufficient to indemnify the beneficiary, the court shall order the amount of the undertaking increased or decreased to the amount it determines to be the probable recovery of the beneficiary if the beneficiary ultimately prevails in proceedings to enforce the liability on the undertaking.~~

(b) The court may order the amount of the undertaking decreased below the amount prescribed by Section 720.160 or 720.260 if the court determines the amount prescribed exceeds the probable recovery of the beneficiary if the beneficiary ultimately prevails in proceedings to enforce the liability on the undertaking .

Comment. Section 720.770 is amended to delete provisions duplicated in the Bond and Undertaking Law. See Sections 995.950 (hearing on objection), 995.960 (determination of sufficiency of undertaking), and 996.010-996.030 (insufficient and excessive undertakings).

28043/NZ

SEC. _____. Section 720.780 of the Code of Civil Procedure is repealed.

~~720.780. If an objection to an undertaking is made on the ground that the market value of property on which the amount of the undertaking depends exceeds the value estimated in the undertaking, the principal may accept the beneficiary's estimate of the market value of the property and immediately file an increased undertaking based on the estimate. In such case, no hearing may be held on the objection, and the beneficiary is bound by the estimate of the market value of the property in any hearing on the sufficiency of the undertaking.~~

Comment. The substance of former Section 720.780 is continued in Section 995.940 (objection to sufficiency of undertaking based on market value).

28042/NZ

SEC. _____. Section 720.790 of the Code of Civil Procedure is repealed.

~~720.790. (a) Notwithstanding Section 2845 of the Civil Code, a judgment of liability on an undertaking shall be in favor of the beneficiary and against the sureties and may be enforced by the beneficiary directly against the sureties. The liability of a surety is limited to the amount of the undertaking. Nothing in this section affects any right of subrogation of a surety against the principal.~~

~~(b) The beneficiary may enforce the liability of sureties on the undertaking by a motion in the court pursuant to Section 1058a without the necessity of an independent action.~~

Comment. The substance of former Section 720.790 is continued in Sections 996.460 (judgment of liability) and 996.440 (motion to enforce liability).

SEC. ____ . Section 1166a of the Code of Civil Procedure is amended to read:

1166a. (a) Upon filing the complaint, the plaintiff may, upon motion, have immediate possession of the premises by a writ of possession of real property issued by the court and directed to the sheriff of the county, or constable or marshal, for execution, where it appears to the satisfaction of the court, after a hearing on the motion, from the verified complaint and from any affidavits filed or oral testimony given by or on behalf of the parties, that the defendant resides out of state, has departed from the state, cannot, after due diligence, be found within the state, or has concealed himself or herself to avoid the service of summons.

(b) Written notice of the hearing on the motion shall be served on the defendant by the plaintiff in accordance with the provisions of Section 1011, and shall inform the defendant as follows: "You may file affidavits on your own behalf with the court and may appear and present testimony on your own behalf. However, if you fail to appear, the plaintiff will apply to the court for a writ of possession of real property."

(c) The plaintiff shall file an undertaking ~~with good and sufficient sureties, to be approved by the judge,~~ in such sum as shall be fixed and determined by the judge, to the effect that, if the plaintiff fails to recover judgment against the defendant for the possession of the premises or if the suit is dismissed, the plaintiff will pay to the defendant such damages, not to exceed the amount fixed in the undertaking, as may be sustained by the defendant by reason of such dispossession under the writ of possession of real property. ~~An action to recover such damages shall be commenced by the defendant in a court of competent jurisdiction within one year from the date of entry of dismissal or of final judgment in favor of the defendant.~~

(d) If, at the hearing on the motion, the findings of the court be are in favor of the plaintiff and against the defendant, an order shall be entered for the immediate possession of the premises.

(e) The order for the immediate possession of the premises may be enforced as provided in Division 3 (commencing with Section 712.010) of Title 9 of Part 2.

(f) For the purposes of this section, references in Division 3 (commencing with Section 712.010) of Title 9 of Part 2 and in subdivisions (e) to (m), inclusive, of Section 1174, to the "judgment debtor" shall be deemed references to the defendant, to the "judgment creditor" shall be deemed references to the plaintiff, and to the "judgment of possession or sale of property" shall be deemed references to an order for the immediate possession of the premises.

Comment. Section 1166a is amended for consistency with the Bond and Undertaking Law. See Sections 995.910 (objections to undertakings) and 996.410 (enforcement of liability on undertaking).

28764

SEC. ____ . Section 25100 of the Corporations Code is amended to read:

25100. The following securities are exempted from the provisions of Sections 25110, 25120, and 25130:

(a) Any security (including a revenue obligation by the United States, any state, any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state or any agency or corporate or other instrumentality of any one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(b) Any security issued or guaranteed by the Dominion of Canada, any Canadian province, any political subdivision or municipality of any such province, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; or any certificate of deposit for any of the foregoing.

(c) Any security issued or guaranteed by and representing an interest in or a direct obligation of a national bank or a bank or trust company incorporated under the laws of this state, and any security issued by a bank to one or more other banks and representing an interest in an asset of the issuing bank.

(d) Any security issued or guaranteed by a federal savings and loan association or federal land bank or joint land bank or national farm loan association or by any savings and loan association which is subject to the supervision and regulation of the Savings and Loan Commissioner of this state.

(e) Any security (other than an interest in all or portions of a parcel or parcels of real property which are subdivided land or a subdivision or in a real estate development), the issuance of which is subject to authorization by the Insurance Commissioner, the Public Utilities Commission, or the Real Estate Commissioner of this state.

(f) Any security consisting of any interest in all or portions of a parcel or parcels of real property which are subdivided lands or a subdivision or in a real estate development; provided that the exemption in this subdivision shall not be applicable to any investment contract sold or offered for sale with, or as part of, any such interest, or to any person engaged in the business of selling, distributing or supplying water for irrigation purposes or domestic use which is not a public utility.

(g) Any shares, investment certificates or borrower's membership certificates (as defined in the Savings and Loan Association Law) issued by a savings and loan association holding a license then in force from the Savings and Loan Commissioner of this state.

(h) Any security issued or guaranteed by any federal credit union, or by any credit union organized and supervised, or regulated, under the Credit Union Law.

(i) Any security issued or guaranteed by any railroad, other common carrier, public utility, or public utility holding company which is (1) subject to the jurisdiction of the Interstate Commerce Commission or (2) a holding company registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act or (3) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, of any state, of Canada or of any Canadian province; and the security is subject to registration with or authorization of issuance by such authority.

(j) Any security (except evidences of indebtedness, whether interest bearing or not) of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual, or (2) organized as a chamber of commerce or trade or professional association. The fact that amounts received from memberships or dues or both will or may be used to construct or otherwise acquire facilities

for use by members of the nonprofit organization does not disqualify the organization for this exemption. This exemption does not apply to the securities of any nonprofit organization if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of such nonprofit organization or from remuneration received from such nonprofit organization.

(k) Any agreement, commonly known as a "life income contract," of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social or reformatory purposes and not for pecuniary profit and (2) which the commissioner designates by rule or order, with a donor in consideration of a donation of property to such issuer and providing for the payment to the donor or persons designated by him of income or specified periodic payments from the donated property or other property for the life of the donor or such other persons.

(l) Any note, draft, bill of exchange, or banker's acceptance which is freely transferable and of prime quality, arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal, provided that such paper is not offered to the public in amounts of less than twenty-five thousand dollars (\$25,000) in the aggregate to any one purchaser. In addition, the commissioner may, by rule or order, exempt any issuer of any notes, drafts, bills of exchange or banker's acceptances from qualification of such securities when he the commissioner finds that such qualification is not necessary or appropriate in the public interest or for the protection of investors.

(m) Any security issued by any corporation organized and existing under the provisions of Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code.

(n) Any beneficial interest in an employees' pension, profit sharing, stock bonus or similar benefit plan which meets the requirements for qualification under Section 401 of the Federal Internal Revenue Code or any statute amendatory thereof or supplementary thereto. A determination letter from the Internal Revenue Service stating that an employees' pension, profit sharing, stock bonus or similar benefit plan meets such requirements shall be conclusive evidence that such plan is an employees' pension, profit sharing, stock bonus or similar plan within the meaning

of the first sentence of this subdivision until the date such determination letter is revoked in writing by the Internal Revenue Service, regardless of whether or not such revocation is retroactive.

(o) Any security listed or approved for listing upon notice of issuance on a national securities exchange certified by rule or order of the commissioner and any warrant or right to purchase or subscribe to any such security.

Such certification of any exchange shall be made by the commissioner upon the written request of the exchange if ~~he~~ the commissioner finds that the exchange, in acting on applications for listing of common stock substantially applies each of the minimum standards set forth in subparagraph (1) below, and in considering suspension or removal from listing, substantially applies each of the criteria set forth in subparagraph (2) below.

(1) Listing standards:

(i) Net tangible assets of at least two million dollars (\$2,000,000).

(ii) Net income of at least two hundred fifty thousand dollars (\$250,000) after all charges including federal income taxes in the fiscal year immediately preceding the filing of a listing application and net income before such taxes of at least five hundred thousand dollars (\$500,000).

(iii) Minimum public distribution of 250,000 shares excluding the holdings of officers, directors, controlling shareholders and other concentrated or family holdings among not less than 900 holders including not less than 600 holders of lots of 100 shares or more, with a corresponding requirement that such securities not be largely held in blocks by institutional investors.

(iv) Minimum price of four dollars (\$4) per share for a reasonable period of time prior to the filing of a listing application.

(v) An aggregate market value for publicly held shares of at least one million five hundred thousand dollars (\$1,500,000).

(2) Criteria for consideration of suspension or removal from listing:

(i) If a company which (A) has net tangible assets of less than one million dollars (\$1,000,000) has sustained net losses in each of its two most recent fiscal years, or (B) has net tangible assets of less than three million dollars (\$3,000,000) and has sustained net losses in three of its four most recent fiscal years.

(ii) If the number of shares publicly held (excluding the holdings of officers, directors, controlling shareholders and other concentrated or family holdings) is less than 150,000.

(iii) If the total number of shareholders of record is less than 450 or if the number of shareholders of lots of 100 shares or more is less than 300.

(iv) If the aggregate market value of shares publicly held is less than seven hundred fifty thousand dollars (\$750,000).

(v) If shares of common stock sell at a price of less than four dollars (\$4) per share for a substantial period of time and the issuer shall fail to effectuate a reverse stock split of such shares within a reasonable period of time after being requested by the exchange to take such action.

The commissioner after appropriate notice and opportunity for hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, may by rule or order, decertify any exchange previously certified which ceases substantially to apply the standards or criteria as set forth above. A rule or order of certification shall conclusively establish that any security listed or approved for listing upon notice of issuance on any exchange named in a rule or order of certification and any warrant or right to purchase or subscribe to any such security is exempt under this subdivision until the adoption of any rule or order decertifying such exchange.

(p) A promissory note secured by a lien on real property, which is neither one of a series of notes of equal priority secured by interests in the same real property nor a note in which beneficial interests are sold to more than one person or one entity.

(q) Any unincorporated interindemnity or reciprocal or interinsurance contract, which qualifies under the provisions of Section 1280.7 of the Insurance Code, between members of a cooperative corporation, organized and operating under Part 2 (commencing with Section 12200) of Division 3 of Title 1, and whose members consist only of physicians and surgeons licensed in California, which contracts indemnify solely in respect to medical malpractice claims against such members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration.

(1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Section 1280.7 of the Insurance Code, ~~he~~ the commissioner may in ~~his~~ the commissioner's discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with Section 1280.7 of the Insurance Code. Upon a proper showing a permanent or preliminary injunction, restraining order or writ of mandate shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. ~~The court shall not require the commissioner to post a bond.~~

(2) The commissioner may, in ~~his~~ the commissioner's discretion, (A) make such public or private investigations within or outside of this state as ~~he~~ the commissioner deems necessary to determine whether any person has violated or is about to violate any provision of Section 1280.7 of the Insurance Code or to aid in the enforcement of ~~such~~ Section 1280.7, and (B) publish information concerning the violation of ~~such~~ Section 1280.7.

(3) For the purpose of any investigation or proceeding under this section, the commissioner or any officer designated by ~~him~~ the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to the person an order requiring ~~him~~ the person to appear before the commissioner, or the officer designated by ~~him~~ the commissioner, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(5) No person is excused from attending or testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by ~~him~~ the commissioner, or in any proceeding instituted by the commissioner,

on the ground that the testimony or evidence (documentary or otherwise), required of ~~him~~ the person may tend to incriminate ~~him~~ the person or subject ~~him~~ the person to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which ~~he~~ the person is compelled, after validly claiming ~~his~~ the privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(r) Any shares or memberships issued by any corporation organized and existing pursuant to the provisions of Part 2 (commencing with Section 12200) of Division 3 of Title 1; provided (1) the corporation limits its shareholders or members primarily to ultimate consumers only or producers only and (2) the aggregate investment of any shareholder or member in shares or memberships sold pursuant to this subdivision does not exceed one hundred dollars (\$100). This exemption does not apply to the shares or memberships of any such corporation if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the corporation or the operation of such corporation or from remuneration, other than reasonable salary, received from such corporation.

(s) Any security consisting of or representing an interest in a pool of mortgage loans which meets each of the following requirements:

(1) The pool consists of mortgage loans originated or acquired in the ordinary course of business by a national bank or federal savings and loan association having its principal office in this state, by a bank incorporated under the laws of this state or by a savings and loan association which is subject to the supervision and regulation of the Savings and Loan Commissioner and which at the time of transfer to the pool is an authorized investment for such origination or acquiring institution;

(2) The pool of mortgage loans is held in trust by a trustee which is a financial institution specified in paragraph (1) as trustee or otherwise;

(3) The loans are serviced by a financial institution specified in paragraph (1);

(4) Such security is not offered in amounts of less than twenty-five thousand dollars (\$25,000) in the aggregate to any one purchaser; and

(5) Such security is offered pursuant to a registration under the Securities Act of 1933, or pursuant to an exemption under Regulation A under such act, or in the opinion of counsel for the issuer, is offered pursuant to an exemption under Section 4(2) of that act.

Comment. Section 25100 is amended to delete a provision duplicated in the Bond and Undertaking Law. See Code Civ. Proc. § 995.220 (bond not required of public officer). The other changes in Section 25100 are technical.

27228

SEC. _____. Section 1587 of the Government Code is repealed.

~~1587. If separate judgments are recovered on the bonds for the same cause of action, the injured party may enforce both judgments, but may only collect, by execution or otherwise, the costs of both suits and the amount actually adjudged on the same causes of action in one of the suits.~~

Comment. The substance of former Section 1587 is continued in Code of Civil Procedure Section 996.250 (effect of additional bond).

09738

SEC. _____. Section 26855.3 of the Government Code is amended to read:

26855.3. The fee for issuing a certificate pursuant to ~~the third requirement of the second paragraph of Section 1057a~~ Section 995.640 of the Code of Civil Procedure is three dollars and fifty cents (\$3.50).

Comment. Section 26855.3 is amended to correct a section reference.

26972/NZ

SEC. _____. Section 1448 of the Penal Code is amended to read:

1448. If the ~~prosecutor~~ complainant does not pay the costs, or give ~~security~~ an undertaking therefor, the court may enter judgment against the ~~prosecutor~~ complainant for the amount ~~thereof~~ of the costs, which may be enforced in the manner provided for enforcement of money judgments generally.

Comment. The changes in Section 1448 are technical.

SEC. ____ . Section 541 of the Probate Code is amended to read:

541. (a) Except as otherwise provided in this section, every person to whom letters testamentary or of administration are directed to issue (unless the testator has waived such requirement) shall, before receiving them, execute a bond to the State of California ~~;~~ ~~with two or more persons or an authorized surety company as surety~~ , to be approved by a judge of the superior court ~~if the surety is not an authorized surety company~~ , conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law. ~~In form the bond shall be joint and several.~~ If the bond is to be given by ~~individual persons~~ personal sureties , the penalty amount shall be not less than twice the value of the personal property and twice the value of the probable annual income from the real property belonging to the estate, which values shall be ascertained by the court or judge by examining on oath the party applying, and any other persons. If the bond is to be given by an ~~authorized surety company~~ admitted surety insurer , the court in its discretion may fix the amount of the bond at not less than the value of the personal property and the probable value of the annual rents, issues and profits of all of the property belonging to the estate.

(b) Unless the will provides for a requirement of a bond, if a verified petition for letters testamentary or of administration alleges that all beneficiaries under the last will and testament of the decedent, or that all heirs at law of the decedent, have waived the filing of a bond, the court, on the hearing of the petition, if the petition so requests, may direct that no bond be filed.

Comment. Section 541 is amended to delete provisions duplicated in the Bond and Undertaking Law. See Code Civ. Proc. §§ 995.310 (sureties on bond), 995.840 (court approval of bond), 995.320 (contents of bond); see also Code Civ. Proc. § 995.120 ("admitted surety insurer" defined).

SEC. ____ . Section 5101 of the Public Contract Code is amended to read:

5101. A bidder shall not be relieved of ~~his or her~~ the bid unless by consent of the awarding authority nor shall any change be made in ~~his or her~~ the bid because of mistake, but ~~he or she~~ the bidder may

bring an action against the public entity in a court of competent jurisdiction in the county in which the bids were opened for the recovery of the amount forfeited, without interest or costs. If

~~The bond of an admitted surety insurer shall be filed with the complaint; in such sum as the court may fix, but not less than five hundred dollars (\$500); conditioned that, if the plaintiff fails to recover judgment, he or she the plaintiff shall pay all costs incurred by the public entity in the suit, including a reasonable attorney's fee to be fixed by the court.~~

Comment. Section 5101 is amended to delete the cost bond provision. This provision did not meet the constitutional standards enunciated in *Beaudreau v. Superior Court*, 14 Cal.3d 448, 535 P.2d 713, 121 Cal. Rptr. 585 (1975), which held unconstitutional Government Code Sections 947 and 951, the cost bond provisions of the California Tort Claims Act. See Recommendation Relating to Security for Costs, 14 Cal. L. Revision Comm'n Reports 319 (1978). The other changes in Section 5101 are technical.

26766

SEC. _____. Section 20398 of the Public Contract Code is amended to read:

20398. The board shall cause the highway work, provided for in this article, to be done in accordance with the provisions of Sections 20391 to 20395, inclusive, except that the notice calling for bids shall be published in a newspaper published in the division if there is such a newspaper. The successful bidder shall give a bond in such sum as the board requires, conditioned on the faithful performance of the contract, and on the payment of all labor employed and material used in the work. ~~The bondsmen shall be jointly and severally liable for the payment of all such labor employed and material used.~~

Comment. Section 20398 is amended to delete a provision duplicated in the Bond and Undertaking Law. See Code Civ. Proc. § 996.460 (judgment of liability).

26761

SEC. _____. Section 20413 of the Public Contract Code is amended to read:

20413. All proposals or bids offered shall be accompanied by cash, a cashier's check or a certified check payable to the city, for an amount which shall not be less than 10 percent of the aggregate of the proposal, or by a bond for that amount and so payable, ~~signed by~~

the bidder and two sureties, who shall justify, before any officer competent to administer an oath, in double that amount, and over and above all statutory exemptions, or by a corporate surety bond to the satisfaction and approval of the superintendent of streets.

Comment. Section 20413 is amended for consistency with the Bond and Undertaking Law. See Code Civ. Proc. §§ 995.310 (sureties on bond), 995.510 (qualifications of surety), 995.520 (affidavit of surety), 995.140 ("bond" defined).

26274

SEC. ____ . Section 20426 of the Public Contract Code is amended to read:

20426. All contractors, contracting owners included, shall, at the time of executing any contract for the work, execute ~~either a corporate surety bond or~~ a bond to the satisfaction and approval of the superintendent of streets ~~with two or more individual sureties~~ and payable to the city, in a sum not less than 25 percent of the amount of the contract, conditioned upon the faithful performance of the contract ~~and the sureties shall justify before any person competent to administer an oath, in double the amount mentioned in the bond, over and above all statutory exemptions .~~

Comment. Section 20426 is amended for consistency with the Bond and Undertaking Law. See Code Civ. Proc. §§ 995.310 (sureties on bond), 995.510 (qualifications of surety), 995.520 (affidavit of surety).

24842

SEC. ____ . Section 20458 of the Public Contract Code is amended to read:

20458. The bond shall be executed ~~either by two or more good and sufficient sureties who have each qualified before an officer competent to administer an oath, in an amount not less than the sum specified in the bond and over and above all statutory exemptions, or by one or more duly authorized corporate sureties, and must provide that if the contractor or his subcontractor fails to shall~~ pay for any materials, provisions, provender, or other supplies or use of implements or machinery used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind ~~that the sureties will pay the same, to an amount not exceeding the sum specified in the bond .~~

Comment. Section 20458 is amended to delete provisions duplicated in the Bond and Undertaking Law. See Code Civ. Proc. §§ 995.310 (sureties on bond), 995.510 (qualifications of surety), 995.520 (affidavit of surety), 996.470 (limitation on liability of surety).

24841

SEC. ____ . Section 20483 of the Public Contract Code is amended to read:

20483. (a) Each bid shall be accompanied by cash, a cashier's check or a certified check, amounting to 10 percent of the bid, payable to the order of the clerk of the legislative body, or by a bond for that amount and so payable ~~, signed by the bidder and two sureties, who shall justify, before any officer competent to administer an oath, in double that amount, and over and above all statutory exemptions~~ or by a corporate surety bond to the satisfaction and approval of the superintendent of streets. The amount so posted shall be forfeited to the municipality if the bidder does not, within 15 days after written notice that the contract has been awarded to ~~him~~ the bidder , enter into a contract with the municipality for the work.

(b) The faithful performance of the contract shall be secured by an undertaking in such penal sum as the legislative body requires, but not less than 25 percent of the contract price, ~~with sureties~~ satisfactory to the legislative body. When the proceedings include the acquisition or construction of works, appliances, or improvements to be owned, managed or controlled by a public agency other than the municipality making the acquisitions or ordering the work done, the legislative body of the municipality may require that the undertaking also inure to the benefit of ~~such~~ the public agency to the extent of its interest in the entire project. The contractor shall also furnish a labor and material bond as required by law in a sum not less than 50 percent of the contract price.

Comment. Section 20483 is amended for consistency with the Bond and Undertaking Law. See Code Civ. Proc. §§ 995.310 (sureties on bond), 995.510 (qualifications of surety), 995.520 (affidavit of surety), 995.140 ("bond" defined). The other changes in Section 10502 are technical.

SEC. ____ . Section 20569 of the Public Contract Code is amended to read:

20569. Any person to whom a contract may be awarded pursuant to this article shall provide a bond ~~with good and sufficient sureties,~~ approved by the board, payable to the district for at least 25 percent of the estimated contract price, conditioned upon the faithful performance of the contract.

Comment. Section 20569 is amended to delete a provision duplicated in the Bond and Undertaking Law. See Code Civ. Proc. § 995.310 (sureties on bond).

SEC. Section 20589 of the Public Contract Code is amended to read:

20589. Any person to whom a contract is awarded shall enter into a bond, ~~with good and sufficient sureties,~~ to be approved by the board, payable to the district for its use, for 25 percent of the amount of the contract price, conditioned for the full and faithful performance of the contract. The work shall be done under the direction and to the satisfaction of, and be approved by, the board.

Comment. Section 20589 is amended to delete a provision duplicated in the Bond and Undertaking Law. See Code Civ. Proc. § 995.310 (sureties on bond).

SEC. ____ . Section 11301.5 of the Vehicle Code is amended to read:

11301.5. If a deposit is given instead of the bond required by Section 11301:

(a) The Director of Motor Vehicles may order the refund of a ~~cash deposit filed with the department pursuant to Section 11301.3~~ the deposit three years from the date a vehicle verifier has ceased to be licensed, if the director is satisfied that there are no outstanding claims against the ~~funds deposited or assigned deposit~~ deposit . A judge of a municipal or superior court may order the return of a ~~cash deposit filed with the department~~ the deposit prior to the expiration of three years from the date a vehicle verifier has ceased to be licensed if there is evidence satisfactory to the court that there are no outstanding claims against the ~~security deposited by the vehicle verifier~~ deposit .

(b) If the director, department, or state is a defendant in any action instituted to recover all or any part of the ~~deposited cash~~ deposit , or any action is instituted by the director, department, or state to determine those entitled to any part of the ~~funds~~ deposit , the director, department, or state shall be paid reasonable attorney fees and costs from the ~~funds~~ deposit . Costs shall include those administrative costs incurred in processing claims against the ~~security posted in lieu of bond pursuant to Section 11301.3~~ deposit .

Comment. Section 11301.5 is amended to reflect the repeal of Section 11301.3.

39286

SEC. ____ . Section 11713 of the Vehicle Code is amended to read:

11713. It shall be unlawful and a violation of this code for the holder of any license issued under this article:

(a) To make or disseminate or cause to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or to so make or disseminate or cause to be so disseminated any such statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated therein, or as so advertised.

(b) To advertise or offer for sale or exchange in any manner, any vehicle not actually for sale at the premises of the dealer or available to the dealer from the manufacturer or distributor of the vehicle at the time of the advertisement or offer; provided, however, that this subdivision does not apply to advertising or offering for sale or exchange any used mobilehome or used commercial coach, as defined by Section 18014 of the Health and Safety Code, other than a recreational vehicle, as defined by Section 18010 of the Health and Safety Code, where the advertising or offering for sale is not contrary to any terms of a contract between the seller of the mobilehome or commercial coach and the owner of the mobilehome park, and which mobilehome or commercial coach is either in place on a lot rented or leased for human habitation within an established mobilehome park, as defined in Section 18214 of the Health and Safety

Code, or is otherwise located, pursuant to a local zoning ordinance or permit, on a lot where its presence has been authorized or its continued presence and the use would be authorized, for a total and uninterrupted period of at least one year.

(c) To fail within 48 hours in writing to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) To advertise or represent a vehicle as a new vehicle if the vehicle falls within the purview of Section 665.

(e) To engage in the business for which licensee is licensed without having in force and effect a ~~good and sufficient~~ bond ~~with corporate surety~~ as ~~hereinbefore~~ provided in Section 11710 .

(f) For any licensed dealer to engage in the business for which the dealer is licensed without at all times maintaining an established place of business as required by this code.

(g) To include, as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which amount is not due to the state unless, prior to the sale, that amount has been paid by a dealer to the state in order to avoid penalties that would have accrued because of late payment of the fees. However, a dealer may collect from the second purchaser of a vehicle a prorated fee based upon the number of months remaining in the registration year for that vehicle, if the vehicle had been previously sold by the dealer and the sale was subsequently rescinded and all the fees that were paid, as required by this code and Chapter 2 (commencing with Section 10751) of Division 2 of the Revenue and Taxation Code, were returned to the first purchaser of the vehicle.

(h) To employ any person as a salesman who has not been licensed pursuant to Article 2 (commencing with Section 11800), and whose license is not displayed on the premises of the dealer as provided in Section 11812.

(i) To deliver, following sale, a vehicle for operation on California highways, if the vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000).

(j) To use or permit the use of the special plates assigned to him for any purpose other than as permitted by Section 11715.

(k) To advertise or otherwise represent, or knowingly to allow to be advertised or represented on ~~his~~ behalf of or at ~~his~~ the place of business of the license holder , that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact

required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle.

(l) To participate in the sale of a vehicle reported to the Department of Motor Vehicles under the provisions of Section 5900 or ~~Section 5901 of this code~~ without making the return and payment of any sales tax due and required by Section 6451 of the Revenue and Taxation Code.

(m) To permit the use of the dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of vehicles required to be registered under this code, or to permit the use of the dealer's license, supplies, or books to operate a branch location to be used by any other person, whether or not the licensee has any financial or equitable interest or investment in the vehicles sold by, or the business of, or branch location used by, the other person.

(n) To violate any of the provisions of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(o) To fail to deliver or honor the terms and conditions of any warranty as set forth in Chapter 3 (commencing with Section 1797) of Title 1.7 of Part 4 of Division 3 of the Civil Code.

(p) To violate any of the provisions of Part 2 (commencing with Section 18000) of Division 13 of, or Section 18613 of, the Health and Safety Code or any rules and regulations issued pursuant thereto.

Comment. Section 11713 is amended for consistency with Section 11710. The other changes in Section 11713 are technical.