

AMENDED IN ASSEMBLY JUNE 26, 2009

AMENDED IN ASSEMBLY MAY 28, 2009

AMENDED IN SENATE APRIL 15, 2009

SENATE BILL

No. 556

**Introduced by Committee on Judiciary (Senators Corbett (Chair),
Florez, Harman, Leno, and Walters)**

February 27, 2009

An act to amend Section 116.820 of the Code of Civil Procedure, to amend Section 68084.1 of the Government Code, to amend Section 3140 of the Probate Code, and to amend Section 19280 of the Revenue and Taxation Code, relating to courts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 556, as amended, Committee on Judiciary. Courts.

(1) Existing law provides that the judgment of a small claims court may be enforced as provided for the enforcement of judgments of other courts. Existing law requires the clerk of the small claims court to charge and collect specified fees for the issuance of a writ of execution or an abstract of judgment, and for an application for an order of examination of a judgment debtor.

This bill would require the clerk of the small claims court to charge and collect all fees associated with the enforcement of small claims court judgments, including, among other things, statutory fees for preparing and issuing, and recording and indexing, an abstract of judgment or a certified copy of a judgment, statutory fees for filing a notice of judgment lien on personal property, and statutory fees for issuing a writ for the enforcement of the judgment, as specified.

(2) Existing law provides that any money in a court bank account or in a court trust account in a county treasury that remains unclaimed for 3 years shall become the property of the superior court if, after published notice, the money is not claimed or no verified complaint is filed and served. Existing law provides that if a claim is filed and rejected, or no action is taken on it, the party who submitted the claim may file a verified complaint seeking to recover all, or a specified part, of the money. Existing law establishes the State Restitution Fund, which is continuously appropriated for indemnifying victims of crime.

This bill would provide that money representing restitution collected on behalf of victims that remains unclaimed for 3 years shall be deposited into the State Restitution Fund *if, after published notice, the money is not claimed or no verified complaint is filed and served*. By depositing moneys into the State Restitution Fund, this bill would make an appropriation.

(3) Existing law requires a conservator served pursuant to specified provisions of law to appear at a hearing and represent a spouse alleged to lack legal capacity for a proposed transaction involving community property. Existing law authorizes the court, in its discretion, to appoint an investigator to review the proposed transaction and report to the court regarding its advisability.

This bill would limit the authority of the court to appoint an ~~investigation~~ *investigator* pursuant to that provision to those cases in which the appointment is necessary. The bill would authorize the court to order the cost of the review and report by a court investigator to be paid out of the proceeds of the transaction or otherwise as the court may direct, if the court determines that its order would not cause a hardship.

(4) Existing law provides that delinquent fines, state or local penalties, forfeitures, restitution fines and orders, and any other amounts imposed by a superior court upon a person or entity for criminal offenses, that total at least \$100 in the aggregate, may be referred by the court, county, or state to the Franchise Tax Board for collection, as specified.

This bill would additionally authorize the referral of delinquent bail amounts imposed by a superior court to the Franchise Tax Board for collection pursuant to this provision.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 116.820 of the Code of Civil Procedure
2 is amended to read:

3 116.820. (a) The judgment of a small claims court may be
4 enforced as provided in Title 9 (commencing with Section 680.010)
5 of Part 2 and in Sections 674 and 1174 on the enforcement of
6 judgments of other courts. A judgment of the superior court after
7 a hearing on appeal, and after transfer to the small claims court
8 under subdivision (d) of Section 116.780, may be enforced like
9 other judgments of the small claims court, as provided in Title 9
10 (commencing with Section 680.010) of Part 2 and in Sections 674
11 and 1174 on the enforcement of judgments of other courts.

12 (b) The clerk of the court shall charge and collect all fees
13 associated with the enforcement of judgments under Title 9
14 (commencing with Section 680.010) of Part 2. The clerk shall
15 immediately deposit all the fees collected under this section into
16 a bank account established for this purpose by the Administrative
17 Office of the Courts. The money shall be remitted to the State
18 Treasury under rules adopted by, or trial court financial policies
19 and procedures authorized by, the Judicial Council under
20 subdivision (a) of Section 77206 of the Government Code. The
21 Controller shall distribute the fees to the Trial Court Trust Fund
22 as provided in Section 68085.1 of the Government Code.

23 (c) The prevailing party in any action subject to this chapter is
24 entitled to the costs of enforcing the judgment and accrued interest.

25 SEC. 2. Section 68084.1 of the Government Code is amended
26 to read:

27 68084.1. (a) Except as otherwise provided by law, any money,
28 excluding restitution to victims, that has been deposited with a
29 superior court, or that a superior court is holding in trust for the
30 lawful owner, in a court bank account or in a court trust account
31 in a county treasury, that remains unclaimed for three years shall
32 become the property of the superior court if, after published notice
33 pursuant to this section, the money is not claimed or no verified
34 complaint is filed and served. Money representing restitution
35 collected on behalf of victims that remains unclaimed for three
36 years shall be deposited into the State Restitution Fund *if, after*
37 *published notice pursuant to this section, the money is not claimed*
38 *or no verified complaint is filed and served.*

(b) At any time after the expiration of the three-year period specified in subdivision (a), the executive officer of the superior court may cause a notice to be published once a week for two successive weeks in a newspaper of general circulation published in the county in which the court is located. The notice shall state the amount of money, the fund in which it is held, and that it is proposed that the money will become the property of the court on a designated date not less than 45 days nor more than 60 days after the first publication of the notice.

(c) Before or after publication, a party of interest may file a claim with the court executive officer that shall include the claimant's name, address, amount of claim, the grounds on which the claim is founded, and any other information that may be required by the court executive officer. The claim shall be filed before the designated date on which unclaimed money becomes the property of the court as provided under subdivision (b), and the executive officer shall accept or reject that claim.

(d) If the superior court executive officer rejects the claim, or takes no action on the claim within 30 days after it is filed, the party that submitted the claim may file a verified complaint seeking to recover all, or a specified part, of the money in the court in the county in which the notice is published. The copy of the complaint and summons shall be served on the court executive officer. The court executive officer shall withhold the release of the portion of unclaimed money for which a court action has been filed as provided in this section until the court renders a decision or the claim is settled. Any portion of the unclaimed money not covered by the verified complaint shall become the property of the court if no other claim or verified complaint has been filed regarding it within the time specified in this section. If the party that submitted the claim does not file a verified complaint within 30 days after the date that the court mailed notice that the claim was rejected or within 60 days after the claim was filed, the money shall become the property of the court.

(e) Notwithstanding subdivisions (c) and (d), the court executive officer may release the unclaimed money to the depositor of the unclaimed money, or the depositor's heir, beneficiary, or duly appointed representative, if the depositor or the depositor's heir, beneficiary, or duly appointed representative claims the money before the date that the money becomes the property of the superior

1 court, upon submitting proof satisfactory to the court executive
2 officer.

3 (f) If no claim is filed under subdivision (c) and the time for
4 filing claims has expired, the money shall become the property of
5 the court. If a claim or claims are filed with respect to a portion of
6 the money, but not the remainder of the money, and the time for
7 filing claims under subdivision (c) has expired, the remainder of
8 the money shall become the property of the court.

9 (g) Notwithstanding any other provision of this section, the
10 presiding judge may direct the transfer of any individual deposit
11 of twenty dollars (\$20) or less, or any amount if the name of the
12 original depositor is unknown, that remains unclaimed for one
13 year to the Trial Court Operations Fund without the need for
14 publication of notice.

15 (h) The court executive officer may delegate the responsibilities
16 provided in this section to appropriate superior court staff.

17 (i) When any money deposited and held under this section
18 becomes the property of a superior court, the presiding judge shall
19 transfer it to the Trial Court Operations Fund.

20 SEC. 3. Section 3140 of the Probate Code is amended to read:

21 3140. (a) A conservator served pursuant to this article shall,
22 and the Director of Mental Health or the Director of Developmental
23 Services given notice pursuant to Section 1461 may, appear at the
24 hearing and represent a spouse alleged to lack legal capacity for
25 the proposed transaction.

26 (b) The court may, in its discretion and if necessary, appoint an
27 investigator to review the proposed transaction and report to the
28 court regarding its advisability.

29 (c) If the court determines that a spouse alleged to lack legal
30 capacity has not competently retained independent counsel, the
31 court may in its discretion appoint the public guardian, public
32 administrator, or a guardian ad litem to represent the interests of
33 the spouse.

34 (d) (1) If a spouse alleged to lack legal capacity is unable to
35 retain legal counsel, upon request of the spouse, the court shall
36 appoint the public defender or private counsel under Section 1471
37 to represent the spouse and, if that appointment is made, Section
38 1472 applies.

39 (2) If the petition proposes a transfer of substantial assets to the
40 petitioner from the other spouse and the court determines that the

1 spouse has not competently retained independent counsel for the
2 proceeding, the court may, in its discretion, appoint counsel for
3 the other spouse if the court determines that appointment would
4 be helpful to resolve the matter or necessary to protect the interests
5 of the other spouse.

6 (e) Except as provided in ~~subdivision~~ paragraph (1) of
7 subdivision (d), the court may fix a reasonable fee, to be paid out
8 of the proceeds of the transaction or otherwise as the court may
9 direct, for all services rendered by privately engaged counsel, the
10 public guardian, public administrator, or guardian ad litem, and
11 by counsel for such persons.

12 (f) The court may order the cost of the review and report by a
13 court investigator pursuant to subdivision (b) to be paid out of the
14 proceeds of the transaction or otherwise as the court may direct,
15 if the court determines that its order would not cause a hardship.

16 SEC. 4. Section 19280 of the Revenue and Taxation Code is
17 amended to read:

18 19280. (a) (1) Fines, state or local penalties, bail, forfeitures,
19 restitution fines, restitution orders, or any other amounts imposed
20 by a superior court of the State of California upon a person or any
21 other entity that are due and payable in an amount totaling no less
22 than one hundred dollars (\$100), in the aggregate, for criminal
23 offenses, including all offenses involving a violation of the Vehicle
24 Code, may, no sooner than 90 days after payment of that amount
25 becomes delinquent, be referred by the superior court, the county,
26 or the state to the Franchise Tax Board for collection under
27 guidelines prescribed by the Franchise Tax Board. Unless the
28 victim of the crime notifies the Department of Corrections and
29 Rehabilitation to the contrary, the Department of Corrections and
30 Rehabilitation may refer a restitution order to the Franchise Tax
31 Board, in accordance with subparagraph (B) of paragraph (2), for
32 any person subject to the restitution order who is or has been under
33 the jurisdiction of the Department of Corrections and
34 Rehabilitation.

35 (2) For purposes of this subdivision:

36 (A) The amounts referred by the superior court, the county, or
37 state under this section may include an administrative fee and any
38 amounts that a government entity may add to the court-imposed
39 obligation as a result of the underlying offense, trial, or conviction.

1 For purposes of this article, those amounts shall be deemed to be
2 imposed by the court.

3 (B) Restitution orders may be referred to the Franchise Tax
4 Board only by a government entity, as agreed upon by the
5 Franchise Tax Board, provided that all of the following apply:

6 (i) The government entity has the authority to collect on behalf
7 of the state or the victim.

8 (ii) The government entity shall be responsible for distributing
9 the restitution order collections, as appropriate.

10 (iii) The government entity shall ensure, in making the referrals
11 and distributions, that it coordinates with any other related
12 collection activities that may occur by superior courts, counties,
13 or other state agencies.

14 (iv) The government entity shall ensure compliance with laws
15 relating to the reimbursement of the State Restitution Fund.

16 (C) The Franchise Tax Board shall establish criteria for referral,
17 which shall include setting forth a minimum dollar amount subject
18 to referral and collection.

19 (b) The Franchise Tax Board, in conjunction with the Judicial
20 Council, shall seek whatever additional resources are needed to
21 accept referrals from all 58 counties or superior courts.

22 (c) Upon written notice to the debtor from the Franchise Tax
23 Board, any amount referred to the Franchise Tax Board under
24 subdivision (a) and any interest thereon, including any interest on
25 the amount referred under subdivision (a) that accrued prior to the
26 date of referral, shall be treated as final and due and payable to the
27 State of California, and shall be collected from the debtor by the
28 Franchise Tax Board in any manner authorized under the law for
29 collection of a delinquent personal income tax liability, including,
30 but not limited to, issuance of an order and levy under Article 4
31 (commencing with Section 706.070) of Chapter 5 of Division 2
32 of Title 9 of Part 2 of the Code of Civil Procedure in the manner
33 provided for earnings withholding orders for taxes.

34 (d) (1) Part 10 (commencing with Section 17001), this part,
35 Part 10.7 (commencing with Section 21001), and Part 11
36 (commencing with Section 23001) shall apply to amounts referred
37 under this article in the same manner and with the same force and
38 effect and to the full extent as if the language of those laws had
39 been incorporated in full into this article, except to the extent that

1 any provision is either inconsistent with this article or is not
2 relevant to this article.

3 (2) Any information, information sources, or enforcement
4 remedies and capabilities available to the court or the state referring
5 to the amount due described in subdivision (a), shall be available
6 to the Franchise Tax Board to be used in conjunction with, or
7 independent of, the information, information sources, or remedies
8 and capabilities available to the Franchise Tax Board for purposes
9 of administering Part 10 (commencing with Section 17001), this
10 part, Part 10.7 (commencing with Section 21001), or Part 11
11 (commencing with Section 23001).

12 (e) The activities required to implement and administer this part
13 shall not interfere with the primary mission of the Franchise Tax
14 Board to administer Part 10 (commencing with Section 17001)
15 and Part 11 (commencing with Section 23001).

16 (f) For amounts referred for collection under subdivision (a),
17 interest shall accrue at the greater of the rate applicable to the
18 amount due being collected or the rate provided under Section
19 19521. When notice of the amount due includes interest and is
20 mailed to the debtor and the amount is paid within 15 days after
21 the date of notice, interest shall not be imposed for the period after
22 the date of notice.

23 (g) In no event shall a collection under this article be construed
24 as a payment of income taxes imposed under Part 10 (commencing
25 with Section 17001) or Part 11 (commencing with Section 23001).