

ASSEMBLY BILL

No. 2759

Introduced by Assembly Member Levine

February 19, 2016

An act to amend Sections 2282, 2282.1, 2286, 2288, 2289, 2293.1, and 2294 of the Corporations Code, relating to fraud.

LEGISLATIVE COUNSEL'S DIGEST

AB 2759, as introduced, Levine. Corporations: agents: victims of corporate fraud compensation fund.

Existing law establishes the Victims of Corporate Fraud Compensation Fund, a continuously appropriated fund, within the State Treasury administered by the Secretary of State, the sole purpose of which is to provide restitution to victims of corporate fraud. Existing law provides that an aggrieved person who obtains a final judgment, as specified, against a corporation based upon the corporation's fraud, misrepresentation, or deceit, made with intent to defraud, may file an application with the Secretary of State for payment from the fund for the amount unpaid on the judgment that represents the awarded actual and direct loss to the claimant in the final judgment.

This bill would additionally apply those provisions if an aggrieved person obtains a final judgment against an agent of a corporation based upon those same circumstances. The bill would also make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 2282 of the Corporations Code is
2 amended to read:

3 2282. (a) When an aggrieved person obtains a final judgment
4 in a court of competent jurisdiction against a corporation *or an*
5 *agent of a corporation* based upon the corporation’s *or the agent’s*
6 fraud, misrepresentation, or deceit, made with intent to defraud,
7 the aggrieved person may, upon the judgment becoming final and
8 after diligent collection efforts are made, file an application with
9 the Secretary of State for payment from the fund, within the
10 limitations specified in Section 2289, for the amount unpaid on
11 the judgment that represents the awarded actual and direct loss,
12 any awarded compensatory damages, and awarded costs to the
13 claimant in the final judgment, excluding punitive damages.

14 (b) The application shall be delivered in person or by certified
15 mail to the Secretary of State not later than 18 months after the
16 judgment has become final.

17 (c) The application shall be made on a form prescribed by the
18 Secretary of State and shall include each of the following:

- 19 (1) The name and address of the claimant.
- 20 (2) If the claimant is represented by an attorney for the
21 application, the name, business address, and telephone number of
22 the attorney. If the claimant is not represented by an attorney for
23 the application, a telephone number where the claimant can be
24 reached during regular business hours shall be included.
- 25 (3) The name and address of the ~~corporation~~ *corporation or*
26 *the agent of the corporation*.
- 27 (4) The identification of the final judgment, the amount of the
28 claim that remains unreimbursed from any source, and an
29 explanation of the claim’s computation.

30 (5) A copy of a final judgment and a copy of the civil complaint
31 and any amendments thereto upon which the judgment finding
32 fraud, misrepresentation, or deceit, made with the intent to defraud,
33 was made shall be deemed to satisfy compliance with the
34 requirements prescribed in this paragraph. The claimant may also
35 provide any additional documentation that he or she believes may
36 help the Secretary of State in evaluating the application, including,
37 but not limited to, evidence submitted to the court in the underlying
38 judgment or a detailed narrative statement of facts in explanation

1 of the allegations of the complaint upon which the underlying
2 judgment is based.

3 (6) A description of searches and inquiries conducted by or on
4 behalf of the claimant with respect to the corporation's *or agent's*
5 assets liable to be sold or applied to satisfaction of the judgment.
6 A court's determination or finding of the corporation's *or agent's*
7 insolvency or lack of assets to pay the claimant shall be deemed
8 to satisfy the requirements prescribed in this paragraph.

9 (7) Each of the following representations by the claimant:

10 (A) That the claimant is not a spouse or an immediate family
11 member of an employee, officer, director, managing agent, or other
12 principal of the corporation nor a personal representative of the
13 spouse or an immediate family member of an employee, officer,
14 director, managing agent, or other principal of the corporation.

15 (B) That the claimant has complied with all of the requirements
16 of this section.

17 (C) That the judgment underlying the claim meets the
18 requirements of subdivisions (a) and (b) of Section 2282, including
19 all of the following:

20 (i) That the judgment was for fraud, misrepresentation, or deceit
21 by the ~~corporation~~, *corporation or the agent of the corporation*,
22 with the intent to defraud.

23 (ii) That the judgment is unpaid in part or in whole.

24 (iii) That the underlying judgment and debt have not been
25 discharged in bankruptcy, or the underlying judgment is statutorily
26 nondischargeable, or, in the case of a bankruptcy proceeding that
27 is open at or after the time of the filing of the application, that the
28 judgment and debt have been declared to be nondischargeable by
29 the judge or stipulated as nondischargeable by the parties in the
30 proceeding and that the claimant has been granted permission by
31 the bankruptcy court to proceed with collection or otherwise
32 proceed with the claimant's claims against the ~~corporation~~.
33 *corporation or its agent*.

34 (D) That the claimant does not have a pending claim and has
35 not collected on the final judgment from any other restitution fund.
36 If the claimant has a pending claim or has collected from another
37 fund, a description of the nature of the pending claim and the
38 recovery amounts from any restitution fund.

39 (d) (1) Except as provided in paragraphs (2), (3), and (4) the
40 Secretary of State shall not condition an award of payment from

1 the fund upon a claimant providing any additional information or
2 documents other than those prescribed in subdivision (c).

3 (2) If the final judgment in favor of the claimant was by default,
4 stipulated, a consent judgment, or pursuant to Section 594 of the
5 Code of Civil Procedure or if the action against the corporation *or*
6 *its agent* was defended by a trustee in bankruptcy, the Secretary
7 of State may request additional documents and information from
8 the claimant to determine whether the claim is valid.

9 (3) If the final judgment does not expressly set forth the amount
10 of damages that were awarded for actual loss and compensatory
11 damages that are payable from the fund pursuant to Section 2289,
12 the Secretary of State may ask the claimant to provide copies of
13 documentation pertaining to the amount of the actual and direct
14 loss and the awarded compensatory damages or both of those
15 findings. For purposes of this section, “sufficient proof of money
16 damages” may include any of the following: copies of bank account
17 statements showing or confirming particular transactions, copies
18 of the front and back of checks made payable to the corporation
19 that have been negotiated, credit card statements showing or
20 confirming particular transactions, or similar documentation
21 demonstrating financial loss directly resulting from the fraudulent
22 acts by the corporation *or its agent* and the amount of
23 compensatory damages awarded by the court.

24 (4) If there is no court determination or finding of the
25 corporation’s insolvency *of the corporation or its agent* or lack of
26 assets to pay the claimant, the Secretary of State may request
27 additional information and documentation from the claimant to
28 determine what assets, if any are available to satisfy the final
29 judgment.

30 (e) The Secretary of State shall include with the application
31 form a notice to the claimant of his or her obligation to protect the
32 underlying judgment from discharge in bankruptcy, to be appended
33 to the application.

34 (f) If a claimant is a spouse or an immediate family member of
35 an employee, officer, director, managing agent, or other principal
36 of the corporation, or is a personal representative of the spouse or
37 an immediate family member of an employee, officer, director,
38 managing agent, or other principal of the corporation, the claimant
39 shall not be precluded for that reason alone from receiving an

1 award where the claimant can otherwise meet the requirements of
2 this section.

3 SEC. 2. Section 2282.1 of the Corporations Code is amended
4 to read:

5 2282.1. (a) The Secretary of State shall provide notice to the
6 corporation *or its agent* that a claimant has submitted an application
7 for payment from the fund and shall also provide within that notice,
8 as prescribed by the Secretary of State, the method to contest the
9 payment from the fund.

10 (b) The notice shall be provided by certified mail addressed to
11 the corporation's last designated agent for service of process of
12 record with the Secretary of State and notice shall be deemed
13 complete five calendar days after the notice is mailed.

14 (c) If the corporation *or its agent* wishes to contest payment of
15 an application by the Secretary of State, the corporation *or agent*
16 shall mail or deliver a written response addressed to the Secretary
17 of State within 30 calendar days of the notice of the application,
18 and shall mail or deliver a copy of the response to the claimant.
19 The written response of the corporation *or agent* shall not be
20 directed to issues and facts conclusively established by the
21 underlying judgment. If the corporation fails to mail or deliver a
22 timely response, the corporation shall have waived the
23 corporation's right to present objections to payment of the
24 application, and shall not thereafter be entitled to notice of any
25 action taken or proposed to be taken by the Secretary of State with
26 respect to the application.

27 SEC. 3. Section 2286 of the Corporations Code is amended to
28 read:

29 2286. The Secretary of State shall give notice, as prescribed
30 by the Secretary of State, to the corporation *or its agent* that the
31 Secretary of State has made a decision to award funds to the
32 claimant and shall provide a copy of the decision to the ~~corporation.~~
33 *corporation or its agent.*

34 SEC. 4. Section 2288 of the Corporations Code is amended to
35 read:

36 2288. (a) Whenever the court proceeds upon a petition under
37 Section 2287, it shall order payment out of the fund only upon a
38 determination that the aggrieved party has a valid cause of action
39 within the purview of Section 2282, and has complied with Section
40 2287.

1 (b) (1) The Secretary of State may defend any action on behalf
2 of the fund and shall have recourse to all appropriate means of
3 defense and review, including examination of witnesses and the
4 right to relitigate any issues that are material and relevant in the
5 proceeding against the fund. The claimant's judgment shall create
6 a rebuttable presumption of the fraud, misrepresentation, or deceit
7 by the corporation, which presumption shall affect the burden of
8 producing evidence.

9 (2) If the civil judgment, arbitration award, or criminal
10 restitution order in the underlying action on which the final
11 judgment in favor of the petitioner was by default, stipulation,
12 consent or pursuant to Section 594 of the Code of Civil Procedure,
13 or if the action against the corporation *or its agent* was defended
14 by a trustee in bankruptcy, the petitioner shall have the burden of
15 proving that the cause of action against the corporation *or its agent*
16 was for fraud, misrepresentation, or deceit.

17 (c) The Secretary of State may move the court at any time to
18 dismiss the petition when it appears there are no triable issues and
19 the petition is without merit. The motion may be supported by
20 affidavit of any person or persons having knowledge of the facts,
21 and may be made on the basis that the petition, and the judgment
22 referred to therein, does not form the basis for a meritorious
23 recovery claim within the purview of Section 2282; provided,
24 however, the Secretary of State shall give written notice at least
25 10 calendar days before hearing on the motion to the claimant.

26 SEC. 5. Section 2289 of the Corporations Code is amended to
27 read:

28 2289. (a) Notwithstanding any other provision of this chapter
29 and regardless of the number of persons aggrieved in an instance
30 of corporate fraud, or misrepresentation or deceit resulting in a
31 judgment meeting the requirements of Section 2282, or the number
32 of judgments against a ~~corporation~~, *corporation or its agent*, the
33 liability of the fund shall not exceed fifty thousand dollars
34 (\$50,000) for any one claimant per single judgment finding fraud,
35 misrepresentation, or deceit, made with the intent to defraud.

36 (b) When multiple corporations *or its agents* are involved in
37 the same event or series of events that are the basis of the
38 claimant's final judgment and the conduct of two or more of the
39 corporations *or its agents* results in a judgment meeting the
40 requirements of Section 2282, the claimant may seek recovery

1 from the fund based on the judgment against any one of the
2 ~~corporations~~, *corporations or its agents*, subject to the limitations
3 of subdivision (a).

4 (c) When multiple claimants are involved in a corporate fraud,
5 or in misrepresentation or deceit by a ~~corporation~~, *corporation or*
6 *its agents*, resulting in a judgment meeting the requirements of
7 Section 2282, each claimant may seek recovery from the fund
8 individually, subject to the limitations of subdivision (a).

9 (d) Claimants who are spouses, registered domestic partners,
10 or persons other than natural persons, that have obtained an eligible
11 final judgment shall be considered one claimant.

12 SEC. 6. Section 2293.1 of the Corporations Code is amended
13 to read:

14 2293.1. If the Secretary of State pays from the fund any amount
15 in settlement of a claim or toward satisfaction of a final judgment
16 against a ~~corporation~~, *corporation or its agent*, the *corporation or*
17 *its agent* shall be required to pay to the fund the amount paid plus
18 interest at the prevailing legal rate applicable to a judgment
19 rendered in any court of this state, within 30 calendar days of the
20 date that the Secretary of State provided notice of the payment of
21 the award or compromise. If the *corporation or its agent* fails to
22 make the required payment to the fund within the required time,
23 the corporation shall be suspended until the payment is made. A
24 discharge in bankruptcy shall not relieve a *corporation or its agent*
25 from the penalties and disabilities provided in this chapter.

26 SEC. 7. Section 2294 of the Corporations Code is amended to
27 read:

28 2294. The Secretary of State shall not make any award to a
29 claimant from the fund if the claimant has received payment from
30 any other restitution funds or for the portions of the judgment that
31 the claimant has collected from the *corporation or its agent* or any
32 other defendant in the underlying judgment.