

AMENDED IN ASSEMBLY MAY 27, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2759**

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**Introduced by Assembly Member Levine**

February 19, 2016

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An act to amend Sections 2281, 2282, 2282.1, 2286, 2288, 2289, 2290, 2293.1, and 2294 of the Corporations Code, relating to fraud *and making an appropriation therefor*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2759, as amended, 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~~ *agent, as defined*, of a corporation based upon those same circumstances. The bill would also make conforming changes. *By allowing for additional payments to be made from the Victims of Corporate Fraud Compensation Fund, this bill would make an appropriation.*

*Existing law requires the application filed with the Secretary of State to include specified information and documentation, and imposes criminal penalties for the filing of any documents that are false or untrue or contain any willful, material misstatements of fact.*

*This bill would require, if the final judgment is a criminal restitution order, the claimant to provide the charging document and the restitution order, and if the defendant is an agent, documentation showing the defendant named in the restitution order is an agent as defined in this bill. By expanding the scope of a crime, this bill would impose a state-mandated local program.*

*Existing law requires, if, at any time, the money deposited in the Victims of Corporate Fraud Compensation Fund is insufficient to satisfy any duly authorized award or offer of settlement, the Secretary of State to, when sufficient money has been deposited in the fund, satisfy the unpaid award or offer of settlement, plus specified accumulated interest.*

*This bill would eliminate the requirement to pay that specified accumulated interest.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

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

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

- 1     SECTION 1. Section 2281 of the Corporations Code is amended
- 2     to read:
- 3     2281. As used in this chapter:
- 4     (a) "Agent" means a person who was an officer or director of
- 5     a corporation, as defined in subdivision (e), at the time the
- 6     fraudulent acts occurred and was acting in the person's capacity
- 7     as the corporation's officer or director when committing the
- 8     fraudulent acts.
- 9     ~~(a)~~
- 10    (b) "Application" means a request for payment from the fund
- 11    submitted to the Secretary of State pursuant to this chapter.
- 12    ~~(b)~~

1 (c) “Claimant” means an aggrieved person who resides in the  
2 state at the time of the fraud and who submits an application  
3 pursuant to this chapter.

4 (e)

5 (d) “Complaint,” for the purpose of an application based on a  
6 criminal restitution order, means the facts of the underlying  
7 transaction or transactions upon which the criminal restitution  
8 order is based.

9 (f)

10 (e) “Corporation” means a domestic corporation as defined by  
11 Section 162 or 2509 or a foreign corporation that is qualified to  
12 transact business in California pursuant to Section 2105.

13 (e)

14 (f) “Court of competent jurisdiction” means a state or federal  
15 court situated in California.

16 (f)

17 (g) “Final judgment” means a judgment, arbitration award, or  
18 criminal restitution order for which appeals have been exhausted  
19 or for which the period for appeal has expired, enforcement of  
20 which is not barred by the order of any court or by any statutory  
21 provision, which has not been nullified or rendered void by any  
22 court order or statutory provision, and for which the claimant has  
23 not otherwise been fully reimbursed. The following are examples  
24 of final judgments:

25 (1) A civil judgment that has been entered against a corporation  
26 for fraud, misrepresentation, or deceit, with the intent to defraud,  
27 and includes findings of facts and conclusions of law.

28 (2) If the matter was submitted to arbitration, a copy of the  
29 arbitration decision and any other documentation supporting the  
30 arbitration award. An arbitration award against a corporation for  
31 conduct constituting fraud, misrepresentation, or deceit, with the  
32 intent to defraud, that includes findings of fact and conclusions of  
33 law rendered in accordance with the rules established by the  
34 American Arbitration Association or another recognized arbitration  
35 body, and in accordance with Sections 1280 to 1294.2, inclusive,  
36 of the Code of Civil Procedure where applicable, and where the  
37 arbitration award has been confirmed and reduced to judgment  
38 pursuant to Section 1287.4 of the Code of Civil Procedure.

39 (3) A criminal restitution order issued by a court of competent  
40 jurisdiction against a ~~corporation~~ *corporation, or an agent of the*

1 *corporation*, for fraud, misrepresentation, or deceit, with the intent  
2 to defraud, pursuant to subdivision (f) of Section 1202.4 of the  
3 Penal Code or Section 3663 of Title 18 of the United States Code.  
4 An application for payment from the fund that is based on a  
5 criminal restitution order shall comply with all of the requirements  
6 of this chapter.

7 ~~(g)~~

8 (h) “Fund” means the Victims of Corporate Fraud Compensation  
9 Fund created by Section 2280.

10 (i) “*Judgment debtor*” means a corporation or agent against  
11 which a judgment, arbitration award, or criminal restitution order  
12 has been entered for conduct constituting intentional fraud.

13 **SECTION 1.**

14 *SEC. 2.* Section 2282 of the Corporations Code is amended to  
15 read:

16 2282. (a) (1) When an aggrieved person obtains a final  
17 judgment in a court of competent jurisdiction against a corporation  
18 ~~or an agent of a corporation~~ based upon the corporation’s ~~or the~~  
19 ~~agent’s~~ fraud, misrepresentation, or deceit, made with intent to  
20 defraud, *or obtains a criminal restitution order against an agent*  
21 *based upon the agent's fraud, misrepresentation, or deceit, made*  
22 *with intent to defraud while acting in the agent’s capacity as the*  
23 *corporation’s officer or director*, the aggrieved person may, upon  
24 the judgment becoming final and after diligent collection efforts  
25 are made, file an application with the Secretary of State for  
26 payment from the fund, within the limitations specified in Section  
27 2289, for the amount unpaid on the judgment that represents the  
28 awarded actual and direct loss, any awarded compensatory  
29 damages, and awarded costs to the claimant in the final judgment,  
30 excluding punitive damages.

31 (2) *Nothing in this subdivision shall be interpreted to authorize*  
32 *the collection of attorney’s fees. The Legislature finds and declares*  
33 *that this paragraph does not constitute a change in, but is*  
34 *declaratory of, existing law.*

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

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

40 (1) The name and address of the claimant.

1 (2) If the claimant is represented by an attorney for the  
2 application, the name, business address, and telephone number of  
3 the attorney. If the claimant is not represented by an attorney for  
4 the application, a telephone number where the claimant can be  
5 reached during regular business hours shall be included.

6 (3) The name and address of the corporation ~~or the agent of the~~  
7 ~~corporation~~ *and the agent, if any.*

8 (4) The identification of the final judgment, the amount of the  
9 claim that remains unreimbursed from any source, and an  
10 explanation of the claim's computation.

11 (5) A copy of a final judgment and a copy of the civil complaint  
12 and any amendments thereto upon which the judgment finding  
13 fraud, misrepresentation, or deceit, made with the intent to defraud,  
14 was made shall be deemed to satisfy compliance with the  
15 requirements prescribed in this paragraph. The claimant may also  
16 provide any additional documentation that he or she believes may  
17 help the Secretary of State in evaluating the application, including,  
18 but not limited to, evidence submitted to the court in the underlying  
19 judgment or a detailed narrative statement of facts in explanation  
20 of the allegations of the complaint upon which the underlying  
21 judgment is based.

22 (6) *If the final judgment is a criminal restitution order, the*  
23 *claimant shall provide the charging document and the restitution*  
24 *order, and if the defendant is an agent, documentation showing*  
25 *the defendant named in the restitution order is an agent as defined*  
26 *in this chapter.*

27 ~~(6)~~

28 (7) A description of searches and inquiries conducted by or on  
29 behalf of the claimant with respect to the ~~corporation's or agent's~~  
30 *judgment debtor's* assets liable to be sold or applied to satisfaction  
31 of the judgment. A court's determination or finding of the  
32 ~~corporation's or agent's judgment debtor's~~ insolvency or lack of  
33 assets to pay the claimant shall be deemed to satisfy the  
34 requirements prescribed in this paragraph.

35 ~~(7)~~

36 (8) Each of the following representations by the claimant:

37 (A) That the claimant is not a ~~spouse~~ *spouse, registered domestic*  
38 *partner*, or an immediate family member of an employee, officer,  
39 director, managing agent, or other principal of the corporation nor  
40 a personal representative of the spouse or an immediate family

1 member of an employee, officer, director, managing agent, or other  
2 principal of the corporation.

3 (B) That the claimant has complied with all of the requirements  
4 of this section.

5 (C) That the judgment underlying the claim meets the  
6 requirements of subdivisions (a) and (b) of Section 2282, including  
7 all of the following:

8 (i) That the judgment was for fraud, misrepresentation, or deceit  
9 by the corporation or the agent of the corporation, with the intent  
10 to defraud.

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

12 (iii) That the underlying judgment and debt have not been  
13 discharged in bankruptcy, or the underlying judgment is statutorily  
14 nondischargeable, or, in the case of a bankruptcy proceeding that  
15 is open at or after the time of the filing of the application, that the  
16 judgment and debt have been declared to be nondischargeable by  
17 the judge or stipulated as nondischargeable by the parties in the  
18 proceeding and that the claimant has been granted permission by  
19 the bankruptcy court to proceed with collection or otherwise  
20 proceed with the claimant's claims against the corporation or its  
21 agent. *judgment debtor or debtors.*

22 (D) That the claimant does not have a pending claim and has  
23 not collected on the final judgment from any other restitution fund.  
24 If the claimant has a pending claim or has collected from another  
25 fund, a description of the nature of the pending claim and the  
26 recovery amounts from any restitution fund.

27 (d) (1) Except as provided in paragraphs (2), (3), and (4) the  
28 Secretary of State shall not condition an award of payment from  
29 the fund upon a claimant providing any additional information or  
30 documents other than those prescribed in subdivision (c).

31 (2) If the final judgment in favor of the claimant was by default,  
32 stipulated, a consent judgment, or pursuant to Section 594 of the  
33 Code of Civil Procedure or if the action against the corporation or  
34 its agent was defended by a trustee in bankruptcy, the Secretary  
35 of State may request additional documents and information from  
36 the claimant to determine whether the claim is valid.

37 (3) If the final judgment does not expressly set forth the amount  
38 of damages that were awarded for actual loss and compensatory  
39 damages that are payable from the fund pursuant to Section 2289,  
40 the Secretary of State may ask the claimant to provide copies of

1 documentation pertaining to the amount of the actual and direct  
2 loss and the awarded compensatory damages or both of those  
3 findings. For purposes of this section, “sufficient proof of money  
4 damages” may include any of the following: copies of bank account  
5 statements showing or confirming particular transactions, copies  
6 of the front and back of checks made payable to the corporation  
7 that have been negotiated, credit card statements showing or  
8 confirming particular transactions, or similar documentation  
9 demonstrating financial loss directly resulting from the fraudulent  
10 acts by the corporation or its agent and the amount of compensatory  
11 damages awarded by the court.

12 (4) If there is no court determination or finding of the insolvency  
13 of the ~~corporation or its agent~~ *judgment debtor* or lack of assets to  
14 pay the claimant, the Secretary of State may request additional  
15 information and documentation from the claimant to determine  
16 what assets, if ~~any~~ *any*, are available to satisfy the final judgment.

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

21 (f) If a claimant is a ~~spouse~~ *spouse, registered domestic partner,*  
22 or an immediate family member of an employee, officer, director,  
23 managing agent, or other principal of the corporation, or is a  
24 personal representative of the ~~spouse~~ *spouse, registered domestic*  
25 *partner,* or an immediate family member of an employee, officer,  
26 director, managing agent, or other principal of the corporation, the  
27 claimant shall not be precluded for that reason alone from receiving  
28 an award where the claimant can otherwise meet the requirements  
29 of this section.

30 ~~SEC. 2.~~

31 *SEC. 3.* Section 2282.1 of the Corporations Code is amended  
32 to read:

33 2282.1. (a) The Secretary of State shall provide notice to the  
34 corporation ~~or its agent~~ *and all agents named in the application*  
35 that a claimant has submitted an application for payment from the  
36 fund and shall also provide within that notice, as prescribed by the  
37 Secretary of State, the method to contest the payment from the  
38 fund.

39 (b) The notice *to the corporation* shall be provided by certified  
40 mail addressed to the corporation’s last designated agent for service

1 of process of record with the Secretary of State and notice shall  
2 be deemed complete five calendar days after the notice is mailed.

3 (c) If the corporation or its agent wishes to contest payment of  
4 an application by the Secretary of State, the corporation or agent  
5 shall mail or deliver a written response addressed to the Secretary  
6 of State within 30 calendar days of the notice of the application,  
7 and shall mail or deliver a copy of the response to the claimant.  
8 The written response of the corporation or agent shall not be  
9 directed to issues and facts conclusively established by the  
10 underlying judgment. If the corporation fails to mail or deliver a  
11 timely response, the corporation shall have waived the  
12 corporation's right to present objections to payment of the  
13 application, and shall not thereafter be entitled to notice of any  
14 action taken or proposed to be taken by the Secretary of State with  
15 respect to the application.

16 ~~SEC. 3.~~

17 *SEC. 4.* Section 2286 of the Corporations Code is amended to  
18 read:

19 2286. The Secretary of State shall give notice, as prescribed  
20 by the Secretary of State, to the corporation ~~or its agent~~ *and all*  
21 *agents named in the application* that the Secretary of State has  
22 made a decision to award funds to the claimant and shall provide  
23 a copy of the decision to the corporation ~~or its agent~~ *and all agents*  
24 *named in the application.*

25 ~~SEC. 4.~~

26 *SEC. 5.* Section 2288 of the Corporations Code is amended to  
27 read:

28 2288. (a) Whenever the court proceeds upon a petition under  
29 Section 2287, it shall order payment out of the fund only upon a  
30 determination that the aggrieved party has a valid cause of action  
31 within the purview of Section 2282, and has complied with Section  
32 2287.

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



1 (2) If the civil judgment, arbitration award, or criminal  
2 restitution order in the underlying action on which the final  
3 judgment in favor of the petitioner was by default, stipulation,  
4 consent or pursuant to Section 594 of the Code of Civil Procedure,  
5 or if the action against the corporation or its agent was defended  
6 by a trustee in bankruptcy, the petitioner shall have the burden of  
7 proving that the cause of action against the corporation or its agent  
8 was for fraud, misrepresentation, or deceit.

9 *(c) If the final judgment is a criminal restitution order against*  
10 *an agent, the petitioner shall have the burden of proving that the*  
11 *defendant named in the criminal restitution order qualifies as an*  
12 *agent as defined in this chapter. An active corporation, that has*  
13 *submitted a response to the application pursuant to Section 2282.2,*  
14 *may be permitted by the court to appear in the action regarding*  
15 *the sole issue of whether the defendant named in the criminal*  
16 *restitution order qualifies as its agent as defined in this chapter.*

17 (e)

18 (d) The Secretary of State may move the court at any time to  
19 dismiss the petition when it appears there are no triable issues and  
20 the petition is without merit. The motion may be supported by  
21 affidavit of any person or persons having knowledge of the facts,  
22 and may be made on the basis that the petition, and the judgment  
23 referred to therein, does not form the basis for a meritorious  
24 recovery claim within the purview of Section 2282; provided,  
25 however, the Secretary of State shall give written notice at least  
26 10 calendar days before hearing on the motion to the claimant.

27 ~~SEC. 5.~~

28 *SEC. 6.* Section 2289 of the Corporations Code is amended to  
29 read:

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

38 (b) When multiple corporations or *its* *their* agents are involved  
39 in the same event or series of events that are the basis of the  
40 claimant's final judgment and the conduct of two or more of the

1 corporations or its agents results in a judgment meeting the  
2 requirements of Section 2282, the claimant may seek recovery  
3 from the fund based on the judgment against any one of the  
4 corporations or ~~its~~ *their* agents, subject to the limitations of  
5 subdivision (a).

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

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

14 *SEC. 7. Section 2290 of the Corporations Code is amended to*  
15 *read:*

16 2290. If, at any time, the money deposited in the fund is  
17 insufficient to satisfy any duly authorized award or offer of  
18 settlement, the Secretary of State shall, when sufficient money has  
19 been deposited in the fund, satisfy the unpaid awards or offer of  
20 settlement, in the order that the awards or offers of settlement were  
21 originally filed, ~~plus accumulated interest at the rate set by the~~  
22 ~~Federal Reserve Bank of San Francisco on advances made to~~  
23 ~~member banks under Sections 13 and 13a of the Federal Reserve~~  
24 ~~Act, at the time of the award or settlement offer, not to exceed 2~~  
25 ~~percent per year.~~ *filed.*

26 ~~SEC. 6:~~

27 *SEC. 8. Section 2293.1 of the Corporations Code is amended*  
28 *to read:*

29 2293.1. If the Secretary of State pays from the fund any amount  
30 in settlement of a claim or toward satisfaction of a final judgment  
31 against a corporation or its agent, the corporation or its agent shall  
32 be required to pay to the fund the amount paid plus interest at the  
33 prevailing legal rate applicable to a judgment rendered in any court  
34 of this state, within 30 calendar days of the date that the Secretary  
35 of State provided notice of the payment of the award or  
36 compromise. If the corporation or its agent fails to make the  
37 required payment to the fund within the required time, the  
38 corporation shall be suspended until the payment is made. A  
39 discharge in bankruptcy shall not relieve a corporation or its agent  
40 from the penalties and disabilities provided in this chapter.

1     ~~SEC. 7.~~

2     SEC. 9. Section 2294 of the Corporations Code is amended to  
3 read:

4     2294. The Secretary of State shall not make any award to a  
5 claimant from the fund if the claimant has received payment from  
6 any other restitution funds or for the portions of the judgment that  
7 the claimant has collected from the corporation or its agent or any  
8 other defendant in the underlying judgment.

9     SEC. 10. *No reimbursement is required by this act pursuant  
10 to Section 6 of Article XIII B of the California Constitution because  
11 the only costs that may be incurred by a local agency or school  
12 district will be incurred because this act creates a new crime or  
13 infraction, eliminates a crime or infraction, or changes the penalty  
14 for a crime or infraction, within the meaning of Section 17556 of  
15 the Government Code, or changes the definition of a crime within  
16 the meaning of Section 6 of Article XIII B of the California  
17 Constitution.*