

AMENDED IN ASSEMBLY JUNE 16, 1997

AMENDED IN SENATE APRIL 14, 1997

AMENDED IN SENATE MARCH 13, 1997

SENATE BILL

No. 150

Introduced by Senator Kopp

January 14, 1997

An act to amend Section 10471 of the Business and Professions Code, to amend Section 86 of the Code of Civil Procedure, to add Section 3553 to the Labor Code, and to amend Section 1202.4 of the Penal Code, relating to restitution, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 150, as amended, Kopp. Restitution.

(1) Existing law establishes the Recovery Account in the Real Estate Fund which is funded by crediting a specified percentage of any real estate license fee collected. Under existing law, when an aggrieved person obtains a final judgment in a court of competent jurisdiction or an arbitration award against a defendant based upon the defendant's fraud, misrepresentation, or deceit, made with intent to defraud, or conversion of trust funds arising directly out of any transaction in which the defendant, a real estate licensee, performed acts for which his or her license was required, the aggrieved person may file an application with the Department of Real Estate for payment from the Recovery Account of the amount unpaid on the judgment which represents an actual and direct loss to the claimant in

the transaction. The Recovery Account is a continuing appropriation for these purposes.

This bill would provide that a final judgment includes a state or federal criminal restitution order for purposes of this provision, thereby making an appropriation from the Recovery Account.

(2) Under existing law, each municipal court has original jurisdiction of civil cases and proceedings in, among other things, all cases at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to \$25,000 or less, except as specified.

This bill would extend the jurisdiction of the municipal court to include all actions to enforce restitution orders or restitution fines *that were imposed by the municipal court*.

(3) Existing workers' compensation law requires every employer to post and keep posted in a conspicuous location a notice for employees containing information about the employer's insurance and the employees' rights to receive care and benefits.

This bill additionally would require every employer to give any employee who is a victim of a crime *that occurred at his or her the employee's* place of employment written notice that the employee is eligible for workers' compensation *for injuries that may have resulted from the place of employment crime*.

(4) Existing law requires the court to order a defendant to make restitution to any victim or victims who have suffered economic loss as a result of the defendant's conduct, in an amount established by court order. Under existing law, the defendant has the right to a hearing to dispute the determination of the amount of restitution, and the court is authorized to modify the amount, on its own motion or on the motion of the district attorney or the defendant.

This bill additionally would authorize the court to modify the amount of the restitution order on the motion of the victim or victims.

Vote: majority. 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 10471 of the Business and
2 Professions Code is amended to read:

3 10471. (a) When an aggrieved person obtains (1) a
4 final judgment in a court of competent jurisdiction,
5 including, but not limited to, a criminal restitution order
6 issued pursuant to subdivision (f) of Section 1202.4 of the
7 Penal Code or Section 3663 of Title 18 of the United States
8 Code, or (2) an arbitration award that includes findings
9 of fact and conclusions of law rendered in accordance
10 with the rules established by the American Arbitration
11 Association or another recognized arbitration body, and
12 in accordance with Sections 1281 to 1294.2, inclusive, of
13 the Code of Civil Procedure where applicable, and where
14 the arbitration award has been confirmed and reduced to
15 judgment pursuant to Section 1287.4 of the Code of Civil
16 Procedure, against a defendant based upon the
17 defendant's fraud, misrepresentation, or deceit, made
18 with intent to defraud, or conversion of trust funds arising
19 directly out of any transaction not in violation of Section
20 10137 or 10138 in which the defendant, while licensed
21 under this part, performed acts for which that license was
22 required, the aggrieved person may, upon the judgment
23 becoming final, file an application with the Department
24 of Real Estate for payment from the Recovery Account,
25 within the limitations specified in Section 10474, of the
26 amount unpaid on the judgment that represents an actual
27 and direct loss to the claimant in the transaction.

28 (b) The application shall be delivered in person or by
29 certified mail to an office of the department not later than
30 one year after the judgment has become final.

31 (c) The application shall be made on a form prescribed
32 by the department, verified by the claimant, and shall
33 include the following:

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

35 (2) If the claimant is represented by an attorney, the
36 name, business address, and telephone number of the
37 attorney.



1 (3) The identification of the judgment, the amount of
2 the claim and an explanation of its computation.

3 (4) A detailed narrative statement of the facts in
4 explanation of the allegations of the complaint upon
5 which the underlying judgment is based.

6 (5) ~~A~~ (A) *Except as provided in subparagraph (B), a*
7 *statement by the claimant, signed under penalty of*
8 *perjury, that the complaint upon which the underlying*
9 *judgment is based was prosecuted conscientiously and in*
10 *good faith. As used in this section, “conscientiously and in*
11 *good faith” means that no party potentially liable to the*
12 *claimant in the underlying transaction was intentionally*
13 *and without good cause omitted from the complaint, that*
14 *no party named in the complaint who otherwise*
15 *reasonably appeared capable of responding in damages*
16 *was dismissed from the complaint intentionally and*
17 *without good cause, and that the claimant employed no*
18 *other procedural ~~tactics~~ means contrary to the diligent*
19 *prosecution of the complaint in order to ~~provide access to~~*
20 *seek to qualify for the Recovery Account.*

21 (B) *For the purpose of an application based on a*
22 *criminal restitution order, all of the following statements*
23 *by the claimant:*

24 (i) *The claimant has not intentionally and without*
25 *good cause failed to pursue any person potentially liable*
26 *to the claimant in the underlying transaction other than*
27 *a defendant who is the subject of a criminal restitution*
28 *order.*

29 (ii) *The claimant has not intentionally and without*
30 *good cause failed to pursue in a civil action for damages*
31 *all persons potentially liable to the claimant in the*
32 *underlying transaction who otherwise reasonably*
33 *appeared capable of responding in damages other than a*
34 *defendant who is the subject of a criminal restitution*
35 *order.*

36 (iii) *The claimant employed no other procedural*
37 *means contrary to the diligent prosecution of the*
38 *complaint in order to seek to qualify for the Recovery*
39 *Account.*



1 (6) The name and address of the judgment debtor or,
2 if not known, the names and addresses of persons who
3 may know the judgment debtor's present whereabouts.

4 (7) The following representations and information
5 from the claimant:

6 (A) That he or she is not a spouse of the judgment
7 debtor nor a personal representative of the spouse.

8 (B) That he or she has complied with all of the
9 requirements of this chapter.

10 (C) That the judgment underlying the claim meets
11 the requirements of subdivision (a).

12 (D) A description of searches and inquiries conducted
13 by or on behalf of the claimant with respect to the
14 judgment debtor's assets liable to be sold or applied to
15 satisfaction of the judgment, an itemized valuation of the
16 assets discovered, and the results of actions by the
17 claimant to have the assets applied to satisfaction of the
18 judgment.

19 (E) That he or she has diligently pursued collection
20 efforts against other judgment debtors and all other
21 persons liable to the claimant in the transaction that is the
22 basis for the underlying judgment.

23 (F) That the underlying judgment and debt have not
24 been discharged in bankruptcy, or, in the case of a
25 bankruptcy proceeding that is open at the time of the
26 filing of the application, that the judgment and debt have
27 been declared to be nondischargeable.

28 (G) That the application was mailed or delivered to
29 the department no later than one year after the
30 underlying judgment became final.

31 (d) The application form shall include detailed
32 instructions with respect to documentary evidence,
33 pleadings, court rulings, the products of discovery in the
34 underlying litigation, and a notice to the applicant of his
35 or her obligation to protect the underlying judgment
36 from discharge in bankruptcy, to be appended to the
37 application.

38 (e) *An application for payment from the Recovery*
39 *Account that is based on a criminal restitution order shall*
40 *comply with all of the requirements of this chapter. For*



1 *the purpose of an application based on a criminal*
2 *restitution order, the following terms have the following*
3 *meanings:*

4 (1) *“Judgment” means the criminal restitution order.*

5 (2) *“Complaint” means the facts of the underlying*
6 *transaction upon which the criminal restitution order is*
7 *based.*

8 (3) *“Judgment debtor” means any defendant who is*
9 *the subject of the criminal restitution order.*

10 SEC. 2. Section 86 of the Code of Civil Procedure is
11 amended to read:

12 86. (a) Each municipal court has original jurisdiction
13 of civil cases and proceedings as follows:

14 (1) In all cases at law in which the demand, exclusive
15 of interest, or the value of the property in controversy
16 amounts to twenty-five thousand dollars (\$25,000) or less,
17 except cases that involve the legality of any tax, impost,
18 assessment, toll, or municipal fine, except the courts have
19 jurisdiction in actions to enforce payment of delinquent
20 unsecured personal property taxes if the legality of the tax
21 is not contested by the defendant.

22 (2) In actions for dissolution of partnership where the
23 total assets of the partnership do not exceed twenty-five
24 thousand dollars (\$25,000); in actions of interpleader
25 where the amount of money or the value of the property
26 involved does not exceed twenty-five thousand dollars
27 (\$25,000).

28 (3) In actions to cancel or rescind a contract when the
29 relief is sought in connection with an action to recover
30 money not exceeding twenty-five thousand dollars
31 (\$25,000) or property of a value not exceeding
32 twenty-five thousand dollars (\$25,000), paid or delivered
33 under, or in consideration of, the contract; in actions to
34 revise a contract where the relief is sought in an action
35 upon the contract if the court otherwise has jurisdiction
36 of the action.

37 (4) In all proceedings in forcible entry or forcible or
38 unlawful detainer where the whole amount of damages
39 claimed is twenty-five thousand dollars (\$25,000) or less.



1 (5) In all actions to enforce and foreclose liens on
2 personal property where the amount of the liens is
3 twenty-five thousand dollars (\$25,000) or less.

4 (6) In all actions to enforce and foreclose liens of
5 mechanics, materialmen, artisans, laborers, and of all
6 other persons to whom liens are given under the
7 provisions of Chapter 2 (commencing with Section 3109)
8 of Title 15 of Part 4 of Division 3 of the Civil Code, or to
9 enforce and foreclose an assessment lien on a common
10 interest development as defined in Section 1351 of the
11 Civil Code, where the amount of the liens is twenty-five
12 thousand dollars (\$25,000) or less. However, where an
13 action to enforce the lien is pending in a municipal court,
14 and affects property that is also affected by a similar
15 action pending in a superior court, or where the total
16 amount of the liens sought to be foreclosed against the
17 same property by action or actions in a municipal court
18 aggregates an amount in excess of twenty-five thousand
19 dollars (\$25,000), the municipal court in which the action
20 or actions are pending, upon motion of any interested
21 party, shall order the action or actions pending therein
22 transferred to the proper superior court. Upon making
23 the order, the same proceedings shall be taken as are
24 provided by Section 399 with respect to the change of
25 place of trial.

26 (7) In actions for declaratory relief when brought
27 pursuant to either of the following:

28 (A) By way of cross-complaint as to a right of
29 indemnity with respect to the relief demanded in the
30 complaint or a cross-complaint in an action or proceeding
31 otherwise within the jurisdiction of the municipal court.

32 (B) To conduct a trial after a nonbinding fee
33 arbitration between an attorney and client, pursuant to
34 Article 13 (commencing with Section 6200) of Chapter 4
35 of Division 3 of the Business and Professions Code, where
36 the amount in controversy is twenty-five thousand dollars
37 (\$25,000) or less.

38 (8) To issue temporary restraining orders and
39 preliminary injunctions, to take accounts, and to appoint
40 receivers where necessary to preserve the property or



1 rights of any party to an action of which the court has
2 jurisdiction; to appoint a receiver and to make any order
3 or perform any act, pursuant to Title 9 (commencing with
4 Section 680.010) of Part 2 (enforcement of judgments); to
5 determine title to personal property seized in an action
6 pending in the court.

7 (9) In all actions under Article 3 (commencing with
8 Section 708.210) of Chapter 6 of Division 2 of Title 9 of
9 Part 2 for the recovery of an interest in personal property
10 or to enforce the liability of the debtor of a judgment
11 debtor where the interest claimed adversely is of a value
12 not exceeding twenty-five thousand dollars (\$25,000) or
13 the debt denied does not exceed twenty-five thousand
14 dollars (\$25,000).

15 (10) In all arbitration-related petitions filed pursuant
16 to either of the following:

17 (A) Article 2 (commencing with Section 1292) of
18 Chapter 5 of Title 9 of Part 3, except for uninsured
19 motorist arbitration proceedings in accordance with
20 Section 11580.2 of the Insurance Code, if the petition is
21 filed before the arbitration award becomes final and the
22 matter to be resolved by arbitration is within the
23 jurisdiction of the municipal court under paragraphs (1)
24 to (9), inclusive, or the petition if filed after the
25 arbitration award becomes final and the amount of the
26 award and all other rulings, pronouncements, and
27 decisions made in the award are within the jurisdiction of
28 the municipal court under paragraphs (1) to (9),
29 inclusive.

30 (B) To confirm, correct, or vacate a fee arbitration
31 award between an attorney and client that is binding or
32 has become binding, pursuant to Article 13 (commencing
33 with Section 6200) of Chapter 4 of Division 3 of the
34 Business and Professions Code, where the arbitration
35 award is twenty-five thousand dollars (\$25,000) or less.

36 (11) In all actions to enforce restitution orders or
37 restitution fines *that were imposed by the municipal*
38 *court.*

39 (b) Each municipal court has jurisdiction of cases in
40 equity as follows:



1 (1) In all cases to try title to personal property when
2 the amount involved is not more than twenty-five
3 thousand dollars (\$25,000).

4 (2) In all cases when equity is pleaded as a defensive
5 matter in any case otherwise properly pending in a
6 municipal court.

7 (3) To vacate a judgment or order of the municipal
8 court obtained through extrinsic fraud, mistake,
9 inadvertence, or excusable neglect.

10 (c) In any action that is otherwise within its
11 jurisdiction, the court may impose liability whether the
12 theory upon which liability is sought to be imposed
13 involves legal or equitable principles.

14 (d) Changes in the jurisdictional ceilings made by
15 amendments to this section at the 1977–78 Regular
16 Session or the 1985–86 Regular Session of the Legislature
17 shall not constitute a basis for the transfer to another court
18 of any case pending at the time these changes become
19 operative.

20 SEC. 3. Section 3553 is added to the Labor Code, to
21 read:

22 3553. Every employer subject to the compensation
23 provisions of this code shall give any employee who is a
24 victim of ~~crime at his or her~~ *a crime that occurred at the*
25 *employee's* place of employment written notice that the
26 employee is eligible for workers' compensation *for*
27 *injuries, including psychiatric injuries, that may have*
28 *resulted from the place of employment crime. The*
29 *employer shall provide this notice, either personally or by*
30 *first-class mail, within one working day of the place of*
31 *employment crime, or within one working day of the date*
32 *the employer reasonably should have known of the crime.*

33 SEC. 4. Section 1202.4 of the Penal Code is amended
34 to read:

35 1202.4. (a) (1) It is the intent of the Legislature that
36 a victim of crime who incurs any economic loss as a result
37 of the commission of a crime shall receive restitution
38 directly from any defendant convicted of that crime.

39 (2) Upon a person being convicted of any crime in the
40 State of California, the court shall order the defendant to



1 pay a fine in the form of a penalty assessment in
2 accordance with Section 1464.

3 (3) The court, in addition to any other penalty
4 provided or imposed under the law, shall order the
5 defendant to pay both of the following:

6 (A) A restitution fine in accordance with subdivision
7 (b).

8 (B) Restitution to the victim or victims, if any, in
9 accordance with subdivision (f), which shall be
10 enforceable as if the order were a civil judgment pursuant
11 to Section 1214.

12 (b) In every case where a person is convicted of a
13 crime, the court shall impose a separate and additional
14 restitution fine, unless it finds compelling and
15 extraordinary reasons for not doing so, and states those
16 reasons on the record.

17 (1) The restitution fine shall be set at the discretion of
18 the court and commensurate with the seriousness of the
19 offense, but shall not be less than two hundred dollars
20 (\$200), and not more than ten thousand dollars (\$10,000),
21 if the person is convicted of a felony, and shall not be less
22 than one hundred dollars (\$100), and not more than one
23 thousand dollars (\$1,000), if the person is convicted of a
24 misdemeanor.

25 (2) In setting a felony restitution fine, the court may
26 determine the amount of the fine as the product of two
27 hundred dollars (\$200) multiplied by the number of years
28 of imprisonment the defendant is ordered to serve,
29 multiplied by the number of felony counts of which the
30 defendant is convicted.

31 (c) The court shall impose the restitution fine unless it
32 finds compelling and extraordinary reasons for not doing
33 so, and states those reasons on the record. A defendant's
34 inability to pay shall not be considered a compelling and
35 extraordinary reason not to impose a restitution fine.
36 Inability to pay may be considered only in increasing the
37 amount of the restitution fine in excess of the
38 two-hundred-dollar (\$200) or one-hundred-dollar (\$100)
39 minimum.



1 (d) In setting the amount of the fine pursuant to
2 subdivision (b) in excess of the two-hundred-dollar
3 (\$200) or one-hundred-dollar (\$100) minimum, the court
4 shall consider any relevant factors including, but not
5 limited to, the defendant's inability to pay, the seriousness
6 and gravity of the offense and the circumstances of its
7 commission, any economic gain derived by the defendant
8 as a result of the crime, the extent to which any other
9 person suffered any losses as a result of the crime, and the
10 number of victims involved in the crime. Those losses
11 may include pecuniary losses to the victim or his or her
12 dependents as well as intangible losses, such as
13 psychological harm caused by the crime. Consideration of
14 a defendant's inability to pay may include his or her
15 future earning capacity. A defendant shall bear the
16 burden of demonstrating his or her inability to pay.
17 Express findings by the court as to the factors bearing on
18 the amount of the fine shall not be required. A separate
19 hearing for the fine shall not be required.

20 (e) The restitution fine shall not be subject to penalty
21 assessments as provided in Section 1464, and shall be
22 deposited in the Restitution Fund in the State Treasury.

23 (f) In every case in which a victim has suffered
24 economic loss as a result of the defendant's conduct, the
25 court shall require that the defendant make restitution to
26 the victim or victims in an amount established by court
27 order, based on the amount of loss claimed by the victim
28 or victims or any other showing to the court. If the
29 amount of loss cannot be ascertained at the time of
30 sentencing, the restitution order shall include a provision
31 that the amount shall be determined at the direction of
32 the court. The court shall order full restitution unless it
33 finds compelling and extraordinary reasons for not doing
34 so, and states them on the record.

35 (1) The defendant has the right to a hearing before a
36 judge to dispute the determination of the amount of
37 restitution. The court may modify the amount, on its own
38 motion or on the motion of the district attorney, the
39 victim or victims, or the defendant. If a motion is made
40 for modification of a restitution order, the victim shall be



1 notified of that motion at least 10 days prior to the
2 proceeding held to decide the motion.

3 (2) Determination of the amount of restitution
4 ordered pursuant to this subdivision shall not be affected
5 by the indemnification or subrogation rights of any third
6 party. Restitution payments made pursuant to this
7 subdivision shall be made to the Restitution Fund to the
8 extent that the victim, as defined in subdivision (k), has
9 received assistance pursuant to Article 1 (commencing
10 with Section 13959) of Chapter 5 of Part 4 of Division 3 of
11 Title 2 of the Government Code.

12 (3) To the extent possible, the restitution order shall
13 be prepared by the sentencing court, shall identify each
14 victim and each loss to which it pertains, and shall be of
15 a dollar amount that is sufficient to fully reimburse the
16 victim or victims for every determined economic loss
17 incurred as the result of the defendant's criminal
18 conduct, including, but not limited to, all of the following:

19 (A) Full or partial payment for the value of stolen or
20 damaged property. The value of stolen or damaged
21 property shall be the replacement cost of like property,
22 or the actual cost of repairing the property when repair
23 is possible.

24 (B) Medical expenses.

25 (C) Wages or profits lost due to injury incurred by the
26 victim, and if the victim is a minor, wages or profits lost
27 by the minor's parent, parents, guardian, or guardians,
28 while caring for the injured minor.

29 (D) Wages or profits lost by the victim, and if the
30 victim is a minor, wages or profits lost by the minor's
31 parent, parents, guardian, or guardians, due to time spent
32 as a witness or in assisting the police or prosecution.

33 (E) Noneconomic losses, including, but not limited to,
34 psychological harm, for felony violations of Section 288.

35 (F) Interest, at the rate of 10 percent per annum, that
36 accrues as of the date of sentencing or loss, as determined
37 by the court.

38 (G) Actual and reasonable attorney's fees and other
39 costs of collection accrued by a private entity on behalf of
40 the victim.



1 (g) The court shall order full restitution unless it finds
2 compelling and extraordinary reasons for not doing so,
3 and states those reasons on the record. A defendant's
4 inability to pay shall not be considered a compelling and
5 extraordinary reason not to impose a restitution order,
6 nor shall inability to pay be a consideration in
7 determining the amount of a restitution order.

8 (h) The district attorney may request an order of
9 examination pursuant to the procedures specified in
10 Article 2 (commencing with Section 708.110) of Chapter
11 6 of Division 2 of Title 9 of Part 2 of the Code of Civil
12 Procedure, in order to determine the defendant's
13 financial assets for purposes of collecting on the
14 restitution order.

15 (i) A restitution order imposed pursuant to subdivision
16 (f) shall be enforceable as if the order were a civil
17 judgment, pursuant to Section 1214.

18 (j) The making of a restitution order pursuant to
19 subdivision (f) shall not affect the right of a victim to
20 recovery from the Restitution Fund as otherwise
21 provided by law, except to the extent that restitution is
22 actually collected pursuant to the order. Restitution
23 collected pursuant to this subdivision shall be credited to
24 any other judgments for the same losses obtained against
25 the defendant arising out of the crime for which the
26 defendant was convicted.

27 (k) For purposes of this section, "victim" shall include
28 the immediate surviving family of the actual victim.
29 "Victim" shall also include any corporation, business
30 trust, estate, trust, partnership, association, joint venture,
31 government, governmental subdivision, agency, or
32 instrumentality, or any other legal or commercial entity
33 when that entity is a direct victim of a crime.

34 (l) At its discretion, the board of supervisors of any
35 county may impose a fee to cover the actual
36 administrative cost of collecting the restitution fine, not
37 to exceed 10 percent of the amount ordered to be paid,
38 to be added to the restitution fine and included in the
39 order of the court, the proceeds of which shall be
40 deposited in the general fund of the county.



1 (m) In every case in which the defendant is granted
2 probation, the court shall make the payment of
3 restitution fines and orders imposed pursuant to this
4 section a condition of probation. Any portion of a
5 restitution order that remains unsatisfied after a
6 defendant is no longer on probation shall continue to be
7 enforceable by a victim pursuant to Section 1214 until the
8 obligation is satisfied.

9 (n) If the court finds and states on the record
10 compelling and extraordinary reasons why a restitution
11 fine or full restitution order should not be required, the
12 court shall order, as a condition of probation, that the
13 defendant perform specified community service, unless
14 it finds and states on the record compelling and
15 extraordinary reasons not to require community service
16 in addition to the finding that restitution should not be
17 required. Upon revocation of probation, the court shall
18 impose restitution pursuant to this section.

19 (o) The provisions of Section 13966.01 of the
20 Government Code shall apply to restitution imposed
21 pursuant to this section.

