

Date of Hearing: April 18, 2016

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 2759 (Levine) – As Introduced February 19, 2016

**SUBJECT:** Corporations: agents: victims of corporate fraud compensation fund

**SUMMARY:** Seeks to compensate victims of corporate fraud committed by corporate officers. Specifically, **this bill:**

- 1) Allows an individual who is a victim of corporate fraud and who wins a judgment against a corporate officer, but is unable to collect the judgment from the officer after diligent efforts to do so, to collect damages from the Corporate Fraud Compensation Fund (Fund) as a similarly situated victim of corporate fraud with a judgment against a corporation would be able to do.

**EXISTING LAW:**

- 1) Establishes the Fund in the State Treasury, administered by the Secretary of State (SOS) for the sole purpose of providing restitution to the victims of a corporate fraud. (Corporations Code Section 2280. All further statutory references are to this code, unless otherwise indicated.)
- 2) Requires the SOS to adopt regulations in furtherance of the administration of the Fund. (*Ibid.*)
- 3) Allows an aggrieved person who obtains a final judgment in a court of competent jurisdiction against a corporation based upon the corporation's fraud, misrepresentation, or deceit, made with intent to defraud, the aggrieved person to, upon the judgment becoming final and after diligent collection efforts are made, file an application with the SOS for payment from the Fund. (Section 2282 (a).)
- 4) Limits the amount of recovery by a person described in 3), above, to the amount unpaid on the judgment that represents the awarded actual and direct loss, any awarded compensatory damages, and awarded costs to the claimant in the final judgment, excluding punitive damages. (Section 2282 (a).)
- 5) Raises money for the Fund by directing one-half of the five dollar disclosure fee required to be paid by corporations when they file their annual Statements of Information with the SOS. (Sections 1502 and 2117.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

Currently, the Fund is structured by statute to provide relief to victims of corporate malfeasance when the convicted entity is a corporation. In cases where an individual, acting in their capacity of an agent of the corporation is convicted of fraud the victim is unable to access the Fund because it is limited to corporations, and not individuals. For example, the CEO of AGA

Financial and two accomplices were convicted of running the largest Ponzi scheme in California history. The many victims of the fraud perpetrated by AGA Financial are unable to get relief from the Fund because the individual officers of AGA were convicted, not the corporation.

In 2002, in response to well-publicized scandals involving Enron and other corporations, the Legislature created the Fund. (See AB 55 (Shelley (Chap. 1015, Stats. of 2002).) The purpose was to help innocent victims of corporate fraud who had won judgments but were unable to collect judgment, either because the corporation was bankrupt, had disappeared, or was otherwise unable or unwilling to pay up. The Fund was financed by a fee on corporate filings, held in the State Treasury, and administered by and pursuant to rules promulgated by the SOS. In order to collect money from the Fund, the victim must have won a judgment and been unable to collect from the corporation despite diligent efforts to do so.

In 2012, the Legislature updated and revised the law regarding the Fund, codifying the SOS regulations in SB 1058 (Lieu-Chapter 564, Statutes of 2012). SB 1058 also sought to improve the claim process to make it more likely that valid claims would be compensated. Among other things, SB 1058 established a new deadline of 90 days for a victim to receive a determination; increased the recovery cap for a single applicant from \$20,000 to \$50,000; and restricted the ability of the fraudulent corporation to contest payments or block appeals by prohibiting consideration of issues and fact already established by the judgment.

According to the SOS, the Fund had a balance of approximately \$11,900,000 as of January 2016. According to information provided by the author:

*The Victims of Corporate Fraud Compensation Fund has not received any applications based upon a criminal restitution order against AGA Financial Inc. However, the Victims of Corporate Fraud Compensation Fund has received numerous claims based upon four criminal restitution orders naming James Koenig and Asset Real Estate and Investment Company in a related criminal proceeding. The first three criminal restitution orders named victims who testified at trial. Administrative review has been completed for all of the submitted Applications based upon the first three restitution orders and the Victims of Corporate Fraud Compensation Fund has paid out more than \$1.1 million dollars to victims named in the three orders.*

*The court issued its fourth restitution order, on June 24, 2015, naming victims who had not testified at trial. The Victims of Corporate Fraud Compensation Fund received nearly 300 claims based upon the June 24, 2015 criminal restitution order. Unfortunately, James Koenig has filed a Notice of Appeal with respect to the June 24, 2015 criminal restitution order which is still pending. California Corporations Code sections 2281(f) and 2282(a) preclude the payment of claims while an appeal is pending. Therefore, the Victims of Corporate Fraud Fund is statutorily precluded from awarding applications based upon the June 24, 2015 criminal restitution order until the appeal has run its course.*

According to the author:

*We know that there are victims of corporate fraud that are unable to access the victims of corporate fraud compensation fund. That is because to access the fund an individual must have been a victim of a corporation that has been convicted. Very rarely are corporations charged with crimes almost always it is an individual who is charged with a*

*crime. AB 2759 will correct this problem and allow many individuals who should have access to the fund access.*

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

5 Individuals

**Opposition**

None on file.

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