

By: Geren

H.B. No. 1866

A BILL TO BE ENTITLED

AN ACT

1
2 relating to compensation and restitution to crime victims and the
3 disposition of unclaimed restitution payments; providing for an
4 administrative penalty; authorizing a fee.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Article 56.54, Code of Criminal Procedure, is
7 amended by amending Subsections (a), (d), (f), (g), and (l) and
8 adding Subsection (m-1) to read as follows:

9 (a) The compensation to victims of crime fund is [~~and the~~
10 ~~compensation to victims of crime auxiliary fund are~~] in the state
11 treasury.

12 (d) The attorney general may not make compensation payments
13 in excess of the amount of money available in the compensation to
14 victims of crime fund [~~from the combined funds~~].

15 (f) The office of the attorney general is authorized to
16 accept gifts, grants, and donations to be credited to the
17 compensation to victims of crime fund [~~and compensation to victims~~
18 ~~of crime auxiliary fund~~] and shall file annually with the governor
19 and the presiding officer of each house of the legislature a
20 complete and detailed written report accounting for all gifts,
21 grants, and donations received and disbursed, used, or maintained
22 by the office for the attorney general that are credited to the fund
23 [~~these funds~~].

24 (g) Money in the compensation to victims of crime fund [~~or~~

1 ~~in the compensation to victims of crime auxiliary fund]~~ may be used
2 only as provided by this subchapter and is not available for any
3 other purpose. Section 403.095, Government Code, does not apply to
4 the fund.

5 (1) As appropriated by the legislature, the ~~[The]~~ attorney
6 general may use the compensation to victims of crime auxiliary fund
7 to cover costs incurred by the attorney general in administering
8 the address confidentiality program established under Subchapter
9 C.

10 (m-1) Notwithstanding Subsection (m), the attorney general
11 may not transfer money under that subsection during a fiscal year
12 beginning September 1, 2017, or September 1, 2018. This subsection
13 expires September 1, 2019.

14 SECTION 2. Section 76.013, Government Code, is amended by
15 amending Subsections (a), (b), and (c) and adding Subsections
16 (b-1), (b-2), and (b-3) to read as follows:

17 (a) If a judge requires a defendant to make restitution to a
18 victim of the defendant's offense, and a restitution payment is
19 received by a department from the defendant for transmittal to a
20 victim of the offense, the department ~~[that receives the payment~~
21 ~~for disbursement to the victim]~~ shall immediately deposit the
22 payment in an interest-bearing account in the county treasury as
23 required by Section 140.003(f), Local Government Code.

24 (b) If a department receives an initial restitution payment
25 ~~[is received by a department]~~, the department shall immediately
26 ~~[shall]~~ notify the victim ~~[of that fact]~~ by certified mail, mailed
27 to the last known address of the victim, that the restitution

1 payment has been received and shall inform the victim of how a claim
2 for payment of restitution can be made. [~~If a victim then makes a~~
3 ~~claim for payment, the department promptly shall remit the payment~~
4 ~~to the victim. A department is obligated to make a good faith~~
5 ~~effort to locate and notify a victim that an unclaimed payment~~
6 ~~exists. The department satisfies the good faith requirement under~~
7 ~~this subsection by sending to the victim by certified mail on any~~
8 ~~one occasion during the period the defendant is required to make~~
9 ~~payments a notice that the victim is entitled to an unclaimed~~
10 ~~payment. Not earlier than the fifth anniversary of the date on~~
11 ~~which the department mails notice under this subsection, if the~~
12 ~~victim has not made a claim for payment, the department shall~~
13 ~~transfer from the interest-bearing account to the comptroller all~~
14 ~~payments received. After making an initial transfer of payments to~~
15 ~~the comptroller under this subsection, the department, not later~~
16 ~~than the 121st day after the date the department receives a~~
17 ~~subsequent payment, shall transfer the subsequent payment to the~~
18 ~~comptroller. The department shall deduct five percent of the~~
19 ~~payment or subsequent payment as a collection fee and deduct any~~
20 ~~interest accrued on the payment or subsequent payment before~~
21 ~~transferring the payment to the comptroller under this subsection.~~
22 ~~The comptroller shall deposit the payment in the state treasury to~~
23 ~~the credit of the compensation to victims of crime auxiliary fund.]~~

24 (b-1) If a victim makes a claim for payment of restitution
25 with the department, the department shall promptly remit to the
26 victim all restitution payments received by the department from the
27 defendant for transmittal to the victim.

1 (b-2) If a victim who is entitled to restitution does not
2 make a claim for payment before the fifth anniversary of the date
3 the department receives the initial restitution payment or if,
4 after the victim makes a claim for payment, the department is unable
5 to locate the victim for a period of five years after the date the
6 department last made a payment to the victim, any unclaimed
7 restitution payments being held by the department for payment to
8 the victim are presumed abandoned. The department shall report and
9 deliver to the comptroller all unclaimed restitution payments
10 presumed abandoned under this section, less a collection fee of one
11 and one-half percent, in the manner provided by Chapter 77,
12 Property Code.

13 (b-3) If on March 1 a department is not holding unclaimed
14 restitution payments that are presumed abandoned under this
15 section, the department shall file a property report under Section
16 77.051, Property Code, that certifies that the department is not
17 holding any unclaimed restitution payments that are presumed
18 abandoned under this section.

19 (c) The collection fee under Subsection (b-2) [~~(b)~~] and the
20 accrued interest under Subsection [~~Subsections~~] (a) [~~and (b)~~] shall
21 be deposited in the special fund of the county treasury provided by
22 Section 509.011 to be used for the same purposes for which state aid
23 may be used under that section. [~~The department has a maximum of~~
24 ~~121 days after the five-year expiration date to transfer the funds~~
25 ~~to the comptroller's office. Failure to comply with the 121-day~~
26 ~~deadline will result in a five percent collection fee penalty~~
27 ~~calculated from the total deposit and all interest attributable to~~

1 ~~the unclaimed funds.]~~

2 SECTION 3. Section 508.322, Government Code, is amended by
3 amending Subsection (e) and adding Subsection (f) to read as
4 follows:

5 (e) If a victim who is entitled to restitution does not make
6 a claim for payment before the fifth anniversary of the date the
7 department receives the initial restitution payment or if, after
8 the victim makes a claim for payment, the department is unable to
9 locate the victim for a period of five years after the date the
10 department last made a payment to the victim, any unclaimed
11 restitution payments being held by the department for payment to
12 the victim are presumed abandoned. The department shall report and
13 deliver to the comptroller all unclaimed restitution payments
14 presumed abandoned under this section in the manner provided by
15 Chapter 77, Property Code ~~[Money that remains unclaimed shall be~~
16 ~~transferred to the compensation to victims of crime auxiliary fund~~
17 ~~on the fifth anniversary of the date the money was deposited to the~~
18 ~~credit of the releasee restitution fund].~~

19 (f) If on March 1 a department is not holding unclaimed
20 restitution payments that are presumed abandoned under this
21 section, the department shall file a property report under Section
22 77.051, Property Code, that certifies that the department is not
23 holding any unclaimed restitution payments that are presumed
24 abandoned under this section.

25 SECTION 4. Title 6, Property Code, is amended by adding
26 Chapter 77 to read as follows:

1 CHAPTER 77. REPORT, DELIVERY, AND CLAIMS PROCESS FOR

2 UNCLAIMED RESTITUTION PAYMENTS

3 SUBCHAPTER A. APPLICABILITY

4 Sec. 77.001. APPLICABILITY. This chapter applies to
5 unclaimed restitution payments that are presumed abandoned under
6 Section 76.013 or 508.322, Government Code.

7 SUBCHAPTER B. PROPERTY REPORT

8 Sec. 77.051. PROPERTY REPORT. (a) Notwithstanding the
9 confidentiality provisions of Chapters 57, 57A, 57B, and 57D, Code
10 of Criminal Procedure, each holder who on March 1 holds an unclaimed
11 restitution payment that is presumed abandoned under Section 76.013
12 or 508.322, Government Code, shall file a property report with the
13 comptroller on or before the following July 1. The comptroller may
14 prescribe the form to be used for the report required by this
15 section and may require the report to be filed electronically.

16 (b) The property report must include, if known by the
17 holder:

18 (1) the name, social security number, driver's license
19 or state identification number, e-mail address, and last known
20 address of the victim who, from the records of the holder, is
21 entitled to the unclaimed restitution payment;

22 (2) the cause number of the case in which a judge
23 ordered a defendant to pay restitution to the victim, the amount of
24 restitution ordered, and the balance owed to the victim;

25 (3) the date of the last transaction with the victim
26 concerning the restitution payments; and

27 (4) other information that the comptroller requires to

1 be disclosed as necessary for the administration of this chapter.

2 (c) A holder who is required by Subsection (a) to file a
3 report in any year shall file a report each successive year
4 thereafter. If a person required to file a report under this
5 subsection is not holding any restitution payments that are
6 presumed abandoned under Section 76.013 or 508.322, Government
7 Code, the person shall certify that the person is not holding any
8 restitution payments that are presumed abandoned under those
9 sections.

10 Sec. 77.052. NOTICE BY HOLDER REQUIRED. A holder who on
11 March 1 holds an unclaimed restitution payment that is presumed
12 abandoned under Section 76.013 or 508.322, Government Code, shall,
13 on or before the following May 1, mail to the last known address of
14 the victim entitled to the unclaimed restitution payment written
15 notice stating that:

16 (1) the holder is holding the restitution payment to
17 which the victim is entitled; and

18 (2) the holder may be required to deliver the
19 restitution payment to the comptroller on or before July 1 if the
20 victim does not claim the restitution payment.

21 Sec. 77.053. SIGNED STATEMENT. (a) The person preparing a
22 property report required by this chapter shall provide with each
23 copy of the report a statement signed by the holder's chief fiscal
24 officer, as designated by the holder. The signature required by
25 this section may be in an electronic or other form prescribed by the
26 comptroller and shall have the same effect as an original
27 signature.

1 (b) The statement must include the following sentence:

2 "This report contains a full and complete list of all
3 restitution payments held by the undersigned that, from the
4 knowledge and records of the undersigned, are abandoned under the
5 laws of the State of Texas."

6 Sec. 77.054. CONFIDENTIALITY OF PROPERTY REPORT. (a) The
7 property report filed with the comptroller under Section 77.051 is
8 confidential and is not subject to disclosure under Chapter 552,
9 Government Code.

10 (b) The social security number, driver's license or state
11 identification number, and address of a victim are confidential and
12 are not subject to disclosure under Chapter 552, Government Code.
13 For the purposes of this subsection, the victim's address includes
14 information that identifies a victim's place of residence or post
15 office box but does not include the city or county in which the
16 victim resides.

17 Sec. 77.055. EXCEPTION TO LIABILITY. (a) It is an
18 exception to the application of Section 552.352, Government Code,
19 that the comptroller or an officer or employee of the comptroller's
20 office published or disclosed information in reliance on the report
21 filed with the comptroller under Section 77.051.

22 (b) The comptroller or an officer or employee of the
23 comptroller's office is immune from any civil liability for
24 publishing or disclosing confidential information under this
25 section if the comptroller, officer, or employee published or
26 disclosed the information in reliance on the report filed with the
27 comptroller under Section 77.051.

1 SUBCHAPTER C. NOTICE BY COMPTROLLER

2 Sec. 77.101. NOTICE. The comptroller may use one or more
3 methods as necessary to provide the most efficient and effective
4 notice to victims that the comptroller is holding unclaimed
5 restitution payments that are subject to this chapter.

6 Sec. 77.102. PUBLICATION. Notwithstanding Section 77.054,
7 the comptroller may publish on the Internet information regarding
8 unclaimed restitution payments received by the comptroller, except
9 that the comptroller may not publish information that identifies a
10 person as a victim or information that identifies a victim's
11 address. For the purposes of this subsection, the victim's address
12 includes information that identifies a victim's place of residence
13 or post office box but does not include the city or county in which
14 the victim resides.

15 SUBCHAPTER D. DELIVERY

16 Sec. 77.151. DELIVERY OF PROPERTY TO COMPTROLLER. Each
17 holder who on March 1 holds an unclaimed restitution payment that is
18 presumed abandoned under Section 76.013 or 508.322, Government
19 Code, shall deliver the property to the comptroller on or before the
20 following July 1 accompanied by the report required to be filed
21 under Section 77.051.

22 Sec. 77.152. RESPONSIBILITY AFTER DELIVERY. (a) If an
23 unclaimed restitution payment that is presumed abandoned under
24 Section 76.013 or 508.322, Government Code, is reported and
25 delivered to the comptroller, the state shall assume custody of the
26 payment and responsibility for its safekeeping.

27 (b) A holder who delivers an unclaimed restitution payment

1 to the comptroller in compliance with this chapter is relieved of
2 all liability to the extent of the value of the payment delivered
3 for any claim then existing, that may arise after delivery to the
4 comptroller, or that may be made with respect to the payment.

5 (c) If the holder delivers an unclaimed restitution payment
6 to the comptroller in good faith and, after delivery, a person
7 claims the property from the holder, the attorney general shall, on
8 written notice of the claim, defend the holder against the claim,
9 and the holder shall be indemnified against any liability on the
10 claim.

11 SUBCHAPTER E. CLAIM FOR DELIVERED PROPERTY

12 Sec. 77.201. CLAIM FILED WITH COMPTROLLER. (a) The
13 comptroller shall review the validity of each claim for an
14 unclaimed restitution payment filed under this section.

15 (b) If the comptroller determines a claim for an unclaimed
16 restitution payment is valid, the comptroller shall approve the
17 claim. If a claim is approved under this section, the comptroller
18 shall pay the claim.

19 (c) All claims to which this section applies must be filed
20 in accordance with the procedures, contain the information, and be
21 on forms prescribed by the comptroller.

22 (d) On receipt of a claim form and all necessary
23 documentation as may be appropriate under the circumstances, the
24 comptroller may approve the claim of:

25 (1) the victim;

26 (2) if the victim died testate:

27 (A) the appropriate legal beneficiaries of the

1 victim as provided by the last will and testament of the victim that
2 has been accepted into probate or filed as a muniment of title; or

3 (B) the executor of the victim's last will and
4 testament who holds current letters testamentary;

5 (3) if the victim died intestate or is deceased and
6 presumed intestate:

7 (A) the legal heirs of the victim as provided by
8 Chapter 201, Estates Code; or

9 (B) the court-appointed administrator of the
10 victim's estate, on behalf of the legal heirs of the victim;

11 (4) the legal heirs of the victim as established by an
12 affidavit of heirship order signed by a judge of the county probate
13 court or by a county judge;

14 (5) if the victim is a minor child or an adult who has
15 been adjudged incompetent by a court of law, the parent or legal
16 guardian of the child or adult;

17 (6) if the victim is a trust:

18 (A) the trustee, on behalf of the trust; or

19 (B) the beneficiaries of the trust, if the trust
20 is dissolved;

21 (7) if the victim is a corporation:

22 (A) the president or chair of the board of
23 directors of the corporation, on behalf of the corporation;

24 (B) any person who has been delegated legal
25 authority to act on behalf of the corporation by the president or
26 board of directors of the corporation; or

27 (C) a receiver appointed for the corporation;

1 (8) if the victim is a corporation that has been
2 dissolved, liquidated, or otherwise terminated:

3 (A) the surviving shareholders of the
4 corporation in proportion to their ownership of the corporation at
5 the time of dissolution, liquidation, or termination;

6 (B) the corporation's bankruptcy trustee; or

7 (C) a receiver appointed for the corporation;

8 (9) if the victim is a state agency, the comptroller;
9 or

10 (10) any other person that is entitled to receive the
11 unclaimed restitution payment under other law or comptroller
12 policy.

13 (e) Except as provided by Subsections (f) and (g), the
14 comptroller may not approve the claim of or pay a claim to the
15 following persons:

16 (1) a creditor, a judgment creditor, a lienholder, or
17 an assignee of the victim or of any other person entitled to receive
18 an unclaimed restitution payment under this section;

19 (2) a receiver, if the receiver is appointed at the
20 request of a person the comptroller may not pay under Subdivision
21 (1);

22 (3) a person attempting to make a claim on behalf of a
23 trust or corporation that has previously been dissolved or
24 terminated, if it appears the trust or corporation was revived for
25 the purpose of making a claim under this section and the person
26 submitting the claim was not an authorized representative of the
27 corporation or trust at the time of the dissolution or termination;

1 or

2 (4) a person holding a power of attorney, if the person
3 holding a power of attorney is a person the comptroller may not pay
4 under this subsection.

5 (f) The comptroller may approve a claim for child support
6 arrearages owed by the victim and reflected in a child support lien
7 notice that complies with Section 157.313, Family Code. A claim
8 under this subsection may be submitted by the lienholder.

9 (g) The comptroller may approve a claim for debts owed by
10 the victim to the state or any state agency. A claim under this
11 subsection may be submitted by the attorney general or the
12 comptroller on behalf of the state or state agency.

13 Sec. 77.202. CLAIMS NOT ASSIGNABLE. Notwithstanding
14 Section 9.406(f), Business & Commerce Code, an interest in a claim
15 under this chapter may not be assigned.

16 Sec. 77.203. CLAIM FILED WITH HOLDER. (a) If a claim for an
17 unclaimed restitution payment is filed with a holder under this
18 section and the holder determines in good faith that the claim is
19 valid, the holder may pay the amount of the claim.

20 (b) The comptroller may reimburse the holder for a valid
21 claim paid under this section.

22 (c) The request from a holder for reimbursement must be
23 filed in accordance with procedures and on forms prescribed by the
24 comptroller and may not exceed the amount previously reported and
25 delivered by the holder to the comptroller.

26 (d) The comptroller may not reimburse a holder for a claim
27 paid to a person the comptroller is not permitted to pay under

1 Section 77.201(e).

2 (e) The liability of the comptroller to reimburse a holder
3 under this section is limited to the extent of the property
4 delivered under this chapter and remaining in the possession of the
5 comptroller at the time a holder requests reimbursement.

6 Sec. 77.204. APPEAL. (a) A person aggrieved by the
7 decision of a claim filed under this chapter may appeal the decision
8 before the 61st day after the day on which it was rendered.

9 (b) If a claim has not been decided before the 91st day after
10 the day on which it was filed, the claimant may appeal within the
11 60-day period beginning on the 91st day after the day of filing.

12 (c) An appeal under this section must be made by filing suit
13 against the state in a district court in Travis County.

14 (d) A court shall try an action filed under this section de
15 novo and shall apply the rules of practice of the court.

16 Sec. 77.205. LIMITATION OF LIABILITY. The liability of the
17 state is limited to the extent of the property delivered under this
18 chapter and remaining in the possession of the comptroller at the
19 time a suit is filed.

20 Sec. 77.206. FEE FOR RECOVERY. (a) A person who informs a
21 potential claimant that the claimant may be entitled to claim
22 property under this chapter may not contract for or receive from the
23 claimant for services an amount that exceeds 10 percent of the value
24 of the property recovered.

25 (b) A person who receives a fee for recovery from a claimant
26 that exceeds 10 percent of the value of the property recovered is
27 liable to the claimant for the amount of the fee plus attorney's

1 fees and expenses.

2 SUBCHAPTER F. UNCLAIMED PAYMENTS

3 Sec. 77.251. UNCLAIMED RESTITUTION PAYMENTS. (a) The
4 comptroller shall maintain a record that documents unclaimed
5 restitution payments received under this chapter.

6 (b) The comptroller shall deposit all unclaimed restitution
7 payments to the credit of the compensation to victims of crime
8 auxiliary fund in the state treasury.

9 (c) Income or interest derived from unclaimed restitution
10 payments deposited in the fund shall remain in the compensation to
11 victims of crime auxiliary fund.

12 Sec. 77.252. USE OF MONEY. (a) Except as provided by
13 Subsection (b) and Chapter 56, Code of Criminal Procedure, money in
14 the compensation to victims of crime auxiliary fund may only be used
15 to pay claims as provided by this chapter and is not available for
16 any other purpose. Section 403.095, Government Code, does not
17 apply to the fund.

18 (b) The legislature may appropriate money in the
19 compensation to victims of crime auxiliary fund to cover costs
20 incurred by the comptroller in administering this chapter.

21 Sec. 77.253. EXCESS CLAIMS. The comptroller may pay a claim
22 under this chapter that is more than the money available in the
23 compensation to victims of crime auxiliary fund using funds
24 appropriated by the legislature for paying claims under this title.

25 SUBCHAPTER G. ENFORCEMENT

26 Sec. 77.301. RULES. The comptroller may adopt rules
27 necessary to carry out this chapter.

1 Sec. 77.302. EXAMINATION OF RECORDS. (a) To enforce this
2 chapter and to determine whether reports have been made as required
3 by this chapter, the comptroller, the attorney general, or an
4 authorized agent of either, may, at any reasonable time and place,
5 examine the books and records of any holder.

6 (b) The comptroller, the attorney general, or an agent of
7 either may not make public any information obtained by an
8 examination made under this section and may not disclose that
9 information except in the course of a judicial proceeding,
10 authorized by this chapter, in which the state is a party or under
11 an agreement with another state allowing joint audits or the
12 exchange of information obtained under this section.

13 Sec. 77.303. AUTHORITY TO TAKE TESTIMONY AND ISSUE
14 ADMINISTRATIVE SUBPOENAS. (a) In addition to the authority to
15 examine granted by Section 77.302, to enforce this chapter and to
16 determine whether reports have been made as required by this
17 chapter, the comptroller, or the comptroller's designee, may take
18 testimony, administer oaths, and issue subpoenas to compel any
19 person, at a time and place reasonable under the circumstances, to
20 appear and give testimony, and to produce relevant books, records,
21 documents, or other data, in whatever form, for audit, inspection,
22 and copying.

23 (b) A person authorized to serve process under the Texas
24 Rules of Civil Procedure may serve a subpoena issued under
25 Subsection (a). The person shall serve the subpoena in accordance
26 with the Texas Rules of Civil Procedure.

27 Sec. 77.304. ENFORCEMENT OF SUBPOENAS. (a) If the person

1 to whom a subpoena is directed under Section 77.303 fails to comply
2 with the subpoena, or fails to file a motion to quash or otherwise
3 demand a pre-compliance review of the subpoena, within the return
4 date specified in the subpoena, the attorney general shall, on the
5 request of the comptroller, bring suit to enforce the subpoena. The
6 suit may be brought in a state district court where service may be
7 obtained on the person refusing to testify or produce records.

8 (b) A court that determines that the subpoena was issued in
9 good faith shall order compliance with the subpoena. The court may
10 apply penalties for civil and criminal contempt otherwise available
11 at law where a person refuses to comply with the court's order.

12 Sec. 77.305. VENUE FOR PRE-COMPLIANCE REVIEW. A person
13 receiving a subpoena under this chapter may, before the return date
14 specified in the subpoena, petition a district court in Travis
15 County for an order to modify or quash the subpoena.

16 Sec. 77.306. ASSISTANCE IN ENFORCEMENT. If the comptroller
17 or attorney general requests, any state agency, county clerk,
18 district clerk, county attorney, or district attorney shall assist
19 the comptroller or attorney general in enforcing this chapter.

20 Sec. 77.307. PENALTY. A penalty equal to five percent of
21 the value of the unclaimed restitution payment due shall be imposed
22 on a holder who fails to pay or deliver the payment within the time
23 prescribed by this chapter. If a holder fails to pay or deliver an
24 unclaimed restitution payment before the 121st day after the date
25 the payment is due, an additional penalty equal to five percent of
26 the value of the payment due shall be imposed.

27 Sec. 77.308. WAIVER OR ABATEMENT OF PENALTY. The

1 comptroller may waive any penalty or interest imposed under this
2 chapter.

3 SECTION 5. The following laws are repealed:

- 4 (1) Article 56.54(c), Code of Criminal Procedure; and
5 (2) Section 76.013(d), Government Code.

6 SECTION 6. As soon as is practicable after the effective
7 date of this Act, but not later than January 1, 2018, the office of
8 the attorney general and the comptroller of public accounts shall
9 establish a plan for the identification and transfer of records,
10 property, and unspent appropriations of the attorney general that
11 are used for the purpose of managing the compensation to victims of
12 crime auxiliary fund.

13 SECTION 7. As soon as is practicable after the effective
14 date of this Act, but not later than March 1, 2018, a department
15 that prior to the effective date of this Act had previously
16 transferred payments to the comptroller under Section 76.013 or
17 508.322, Government Code, shall provide to the comptroller the
18 information required under Section 77.051(b), Property Code, as
19 added by this Act, for each victim for whom the department
20 previously transferred a payment to the comptroller.

21 SECTION 8. This Act takes effect September 1, 2017.