

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.

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

6 SECTION 1. Article 56.34(f), Code of Criminal Procedure, is
7 amended to read as follows:

8 (f) The compensation to victims of crime fund is [~~and the~~
9 ~~compensation to victims of crime auxiliary fund are~~] the payer
10 [~~payers~~] of last resort.

11 SECTION 2. Articles 56.54(a), (d), (f), and (g), Code of
12 Criminal Procedure, are amended to read as follows:

13 (a) The compensation to victims of crime fund is [~~and the~~
14 ~~compensation to victims of crime auxiliary fund are~~] in the state
15 treasury.

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

19 (f) The office of the attorney general is authorized to
20 accept gifts, grants, and donations to be credited to the
21 compensation to victims of crime fund [~~and compensation to victims~~
22 ~~of crime auxiliary fund~~] and shall file annually with the governor
23 and the presiding officer of each house of the legislature a
24 complete and detailed written report accounting for all gifts,

1 grants, and donations received and disbursed, used, or maintained
2 by the office for the attorney general that are credited to the fund
3 [~~these funds~~].

4 (g) Money in the compensation to victims of crime fund [~~or~~
5 ~~in the compensation to victims of crime auxiliary fund~~] may be used
6 only as provided by this subchapter and is not available for any
7 other purpose. Section 403.095, Government Code, does not apply to
8 the fund.

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

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

19 (b) If a department receives an initial restitution payment
20 [~~is received by a department~~], the department shall immediately
21 [~~shall~~] notify the victim [~~of that fact~~] by certified mail, mailed
22 to the last known address of the victim, that the restitution
23 payment has been received and shall inform the victim of how a claim
24 for payment of restitution can be made. [~~If a victim then makes a~~
25 ~~claim for payment, the department promptly shall remit the payment~~
26 ~~to the victim. A department is obligated to make a good faith~~
27 ~~effort to locate and notify a victim that an unclaimed payment~~

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

19 (b-1) If a victim makes a claim for payment of restitution
20 with the department, the department shall promptly remit to the
21 victim all restitution payments received by the department from the
22 defendant for transmittal to the victim.

23 (b-2) If a victim who is entitled to restitution does not
24 make a claim for payment before the fifth anniversary of the date
25 the department receives the initial restitution payment or if,
26 after the victim makes a claim for payment, the department is unable
27 to locate the victim for a period of five years after the date the

1 department last made a payment to the victim, any unclaimed
2 restitution payments being held by the department for payment to
3 the victim are presumed abandoned. The department shall report and
4 deliver to the comptroller all unclaimed restitution payments
5 presumed abandoned under this section, less a collection fee of one
6 and one-half percent, in the manner provided by Chapter 77,
7 Property Code.

8 (b-3) If on March 1 a department is not holding unclaimed
9 restitution payments that are presumed abandoned under this
10 section, the department shall file a property report under Section
11 77.051, Property Code, that certifies that the department is not
12 holding any unclaimed restitution payments that are presumed
13 abandoned under this section.

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

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

27 (e) If a victim who is entitled to restitution does not make

1 a claim for payment before the fifth anniversary of the date the
2 department receives the initial restitution payment or if, after
3 the victim makes a claim for payment, the department is unable to
4 locate the victim for a period of five years after the date the
5 department last made a payment to the victim, any unclaimed
6 restitution payments being held by the department for payment to
7 the victim are presumed abandoned. The department shall report and
8 deliver to the comptroller all unclaimed restitution payments
9 presumed abandoned under this section in the manner provided by
10 Chapter 77, Property Code [~~Money that remains unclaimed shall be~~
11 ~~transferred to the compensation to victims of crime auxiliary fund~~
12 ~~on the fifth anniversary of the date the money was deposited to the~~
13 ~~credit of the releasee restitution fund~~].

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

20 SECTION 5. Title 6, Property Code, is amended by adding
21 Chapter 77 to read as follows:

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

23 UNCLAIMED RESTITUTION PAYMENTS

24 SUBCHAPTER A. APPLICABILITY

25 Sec. 77.001. APPLICABILITY. This chapter applies to
26 unclaimed restitution payments that are presumed abandoned under
27 Section 76.013 or 508.322, Government Code.

SUBCHAPTER B. PROPERTY REPORT

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

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

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

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

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

(4) other information that the comptroller requires to be disclosed as necessary for the administration of this chapter.

(c) A holder who is required by Subsection (a) to file a report in any year shall file a report each successive year thereafter. If a person required to file a report under this subsection is not holding any restitution payments that are presumed abandoned under Section 76.013 or 508.322, Government

1 Code, the person shall certify that the person is not holding any
2 restitution payments that are presumed abandoned under those
3 sections.

4 Sec. 77.052. NOTICE BY HOLDER REQUIRED. A holder who on
5 March 1 holds an unclaimed restitution payment that is presumed
6 abandoned under Section 76.013 or 508.322, Government Code, shall,
7 on or before the following May 1, mail to the last known address of
8 the victim entitled to the unclaimed restitution payment written
9 notice stating that:

10 (1) the holder is holding the restitution payment to
11 which the victim is entitled; and

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

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

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

23 "This report contains a full and complete list of all
24 restitution payments held by the undersigned that, from the
25 knowledge and records of the undersigned, are abandoned under the
26 laws of the State of Texas."

27 Sec. 77.054. CONFIDENTIALITY OF PROPERTY REPORT. (a) The

1 property report filed with the comptroller under Section 77.051 is
2 confidential and is not subject to disclosure under Chapter 552,
3 Government Code.

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

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

16 (b) The comptroller or an officer or employee of the
17 comptroller's office is immune from any civil liability for
18 publishing or disclosing confidential information under this
19 section if the comptroller, officer, or employee published or
20 disclosed the information in reliance on the report filed with the
21 comptroller under Section 77.051.

22 SUBCHAPTER C. NOTICE BY COMPTROLLER

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

27 Sec. 77.102. PUBLICATION. Notwithstanding Section 77.054,

1 the comptroller may publish on the Internet information regarding
2 unclaimed restitution payments received by the comptroller, except
3 that the comptroller may not publish information that identifies a
4 person as a victim or information that identifies a victim's
5 address. For the purposes of this subsection, the victim's address
6 includes information that identifies a victim's place of residence
7 or post office box but does not include the city or county in which
8 the victim resides.

9 SUBCHAPTER D. DELIVERY

10 Sec. 77.151. DELIVERY OF PROPERTY TO COMPTROLLER. Each
11 holder who on March 1 holds an unclaimed restitution payment that is
12 presumed abandoned under Section 76.013 or 508.322, Government
13 Code, shall deliver the property to the comptroller on or before the
14 following July 1 accompanied by the report required to be filed
15 under Section 77.051.

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

21 (b) A holder who delivers an unclaimed restitution payment
22 to the comptroller in compliance with this chapter is relieved of
23 all liability to the extent of the value of the payment delivered
24 for any claim then existing, that may arise after delivery to the
25 comptroller, or that may be made with respect to the payment.

26 (c) If the holder delivers an unclaimed restitution payment
27 to the comptroller in good faith and, after delivery, a person

1 claims the property from the holder, the attorney general shall, on
2 written notice of the claim, defend the holder against the claim,
3 and the holder shall be indemnified against any liability on the
4 claim.

5 SUBCHAPTER E. CLAIM FOR DELIVERED PROPERTY

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

9 (b) If the comptroller determines a claim for an unclaimed
10 restitution payment is valid, the comptroller shall approve the
11 claim. If a claim is approved under this section, the comptroller
12 shall pay the claim.

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

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

19 (1) the victim;

20 (2) if the victim died testate:

21 (A) the appropriate legal beneficiaries of the
22 victim as provided by the last will and testament of the victim that
23 has been accepted into probate or filed as a muniment of title; or

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

26 (3) if the victim died intestate or is deceased and
27 presumed intestate:

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

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

5 (4) the legal heirs of the victim as established by an
6 affidavit of heirship order signed by a judge of the county probate
7 court or by a county judge;

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

11 (6) if the victim is a trust:

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

13 (B) the beneficiaries of the trust, if the trust
14 is dissolved;

15 (7) if the victim is a corporation:

16 (A) the president or chair of the board of
17 directors of the corporation, on behalf of the corporation;

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

21 (C) a receiver appointed for the corporation;

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

24 (A) the surviving shareholders of the
25 corporation in proportion to their ownership of the corporation at
26 the time of dissolution, liquidation, or termination;

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

1 (C) a receiver appointed for the corporation;
2 (9) if the victim is a state agency, the comptroller;
3 or
4 (10) any other person that is entitled to receive the
5 unclaimed restitution payment under other law or comptroller
6 policy.

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

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

13 (2) a receiver, if the receiver is appointed at the
14 request of a person the comptroller may not pay under Subdivision
15 (1);

16 (3) a person attempting to make a claim on behalf of a
17 trust or corporation that has previously been dissolved or
18 terminated, if it appears the trust or corporation was revived for
19 the purpose of making a claim under this section and the person
20 submitting the claim was not an authorized representative of the
21 corporation or trust at the time of the dissolution or termination;

22 or

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

26 (f) The comptroller may approve a claim for child support
27 arrearages owed by the victim and reflected in a child support lien

1 notice that complies with Section 157.313, Family Code. A claim
2 under this subsection may be submitted by the lienholder or the
3 attorney general on behalf of the lienholder.

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

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

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

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

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

21 (d) The comptroller may not reimburse a holder for a claim
22 paid to a person the comptroller is not permitted to pay under
23 Section 77.201(e).

24 (e) The liability of the comptroller to reimburse a holder
25 under this section is limited to the extent of the property
26 delivered under this chapter and remaining in the possession of the
27 comptroller at the time a holder requests reimbursement.

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

4 (b) If a claim has not been decided before the 91st day after
5 the day on which it was filed, the claimant may appeal within the
6 60-day period beginning on the 91st day after the day of filing.

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

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

11 Sec. 77.205. LIMITATION OF LIABILITY. The liability of the
12 state is limited to the extent of the property delivered under this
13 chapter and remaining in the possession of the comptroller at the
14 time a suit is filed.

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

20 (b) A person who receives a fee for recovery from a claimant
21 that exceeds 10 percent of the value of the property recovered is
22 liable to the claimant for the amount of the fee plus attorney's
23 fees and expenses.

24 SUBCHAPTER F. UNCLAIMED PAYMENTS

25 Sec. 77.251. UNCLAIMED RESTITUTION PAYMENTS. (a) The
26 comptroller shall maintain a record that documents unclaimed
27 restitution payments received under this chapter.

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

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

7 Sec. 77.252. USE OF MONEY. (a) Except as provided by
8 Subsection (b), money in the compensation to victims of crime
9 auxiliary fund may only be used to pay claims as provided by this
10 chapter and is not available for any other purpose. Section
11 403.095, Government Code, does not apply to the fund.

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

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

19 SUBCHAPTER G. ENFORCEMENT

20 Sec. 77.301. RULES. The comptroller may adopt rules
21 necessary to carry out this chapter.

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

27 (b) The comptroller, the attorney general, or an agent of

1 either may not make public any information obtained by an
2 examination made under this section and may not disclose that
3 information except in the course of a judicial proceeding,
4 authorized by this chapter, in which the state is a party or under
5 an agreement with another state allowing joint audits or the
6 exchange of information obtained under this section.

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

17 (b) A person authorized to serve process under the Texas
18 Rules of Civil Procedure may serve a subpoena issued under
19 Subsection (a). The person shall serve the subpoena in accordance
20 with the Texas Rules of Civil Procedure.

21 Sec. 77.304. ENFORCEMENT OF SUBPOENAS. (a) If the person
22 to whom a subpoena is directed under Section 77.303 fails to comply
23 with the subpoena, or fails to file a motion to quash or otherwise
24 demand a pre-compliance review of the subpoena, within the return
25 date specified in the subpoena, the attorney general shall, on the
26 request of the comptroller, bring suit to enforce the subpoena. The
27 suit may be brought in a state district court where service may be

1 obtained on the person refusing to testify or produce records.

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

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

10 Sec. 77.306. ASSISTANCE IN ENFORCEMENT. If the comptroller
11 or attorney general requests, any state agency, county clerk,
12 district clerk, county attorney, or district attorney shall assist
13 the comptroller or attorney general in enforcing this chapter.

14 Sec. 77.307. PENALTY. A penalty equal to five percent of
15 the value of the unclaimed restitution payment due shall be imposed
16 on a holder who fails to pay or deliver the payment within the time
17 prescribed by this chapter. If a holder fails to pay or deliver an
18 unclaimed restitution payment before the 121st day after the date
19 the payment is due, an additional penalty equal to five percent of
20 the value of the payment due shall be imposed.

21 Sec. 77.308. WAIVER OR ABATEMENT OF PENALTY. The
22 comptroller may waive any penalty or interest imposed under this
23 chapter.

24 SECTION 6. The following laws are repealed:

25 (1) Articles 56.54(c), (l), and (m), Code of Criminal
26 Procedure; and

27 (2) Section 76.013(d), Government Code.

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

8 SECTION 8. As soon as is practicable after the effective
9 date of this Act, but not later than March 1, 2018, a department
10 that prior to the effective date of this Act had previously
11 transferred payments to the comptroller under Section 76.013 or
12 508.322, Government Code, shall provide to the comptroller the
13 information required under Section 77.051(b), Property Code, as
14 added by this Act, for each victim for whom the department
15 previously transferred a payment to the comptroller.

16 SECTION 9. This Act takes effect September 1, 2017.