

BILL ANALYSIS

Senate Research Center
85R23071 AJA-D

H.B. 1866
By: Geren (Campbell)
Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties report that some probation departments have difficulty locating crime victims for purposes of remitting restitution payments that are owed to those victims, which are later presumed abandoned and turned over to the Texas comptroller of public accounts as unclaimed property. H.B. 1866 resolves this issue by realigning incentives for probation departments to facilitate the successful location of crime victims.

H.B. 1866 amends current law relating to compensation and restitution to crime victims and the disposition of unclaimed restitution payments, provides for an administrative penalty, and authorizes a fee.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas comptroller of public accounts in SECTION 4 (Section 77.301, Property Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 56.54, Code of Criminal Procedure, by amending Subsections (a), (d), (f), (g), and (l) and adding Subsection (m-1), as follows:

(a) Provides that the compensation to victims of crime fund (fund) is in the state treasury, rather than provides that the fund and the compensation to victims of crime auxiliary fund (auxiliary fund) are in the state treasury.

(d) Prohibits the Texas attorney general (attorney general) from making compensation payments in excess of the amount of money available in the fund, rather than from making compensation payments in excess of the amount of money available from the combined funds.

(f) Provides that the Office of the Attorney General (OAG) is authorized to accept gifts, grants, and donations to be credited to the fund, rather than credited to the fund and auxiliary fund, and requires OAG to file annually with certain government officials a complete and detailed written report accounting for all gifts, grants, and donations received and disbursed, used, or maintained by OAG that are credited to the fund, rather than are credited to these funds.

(g) Authorizes money in the fund, rather than in the fund or in the auxiliary fund, to be used only as provided by this subchapter (Crime Victims' Compensation) and provides that it is not available for any other purpose.

(l) Authorizes the attorney general to use the auxiliary fund, as appropriated by the legislature, to cover certain costs. Makes a nonsubstantive change.

(m-1) Prohibits the attorney general, notwithstanding Subsection (m) (relating to requiring the attorney general to certify the amount of money remaining in the auxiliary fund at the end of the preceding state fiscal year not later than a certain date and authorizing the attorney general to take certain actions relating to the excess amount),

from transferring money under that subsection during a fiscal year beginning September 1, 2017, or September 1, 2018. Provides that this subsection expires September 1, 2019.

SECTION 2. Amends Section 76.013, Government Code, by amending Subsections (a), (b), and (c) and adding Subsections (b-1), (b-2), and (b-3), as follows:

(a) Requires a community supervision and corrections department (department), rather than a department that receives the payment for disbursement to the victim, if a judge requires a defendant to make restitution to a victim of the defendant's offense, and a restitution payment is received by the department from the defendant for transmittal to a victim of the offense, to immediately deposit the payment in a certain required account.

(b) Requires a department, if the department receives an initial restitution payment, to immediately notify the victim by certified mail, mailed to the last known address of the victim, that the restitution payment has been received and to inform the victim of how a claim for payment of restitution can be made, rather than requires a department, if an initial restitution payment is received by the department, to immediately notify the victim of that fact by certified mail, mailed to the last known address of the victim. Deletes existing text requiring the department, if a victim makes a claim for payment, to promptly remit the payment to the victim and providing that a department is obligated to make a good faith effort to locate and notify a victim that an unclaimed payment exists. Deletes existing text providing that the department satisfies the good faith requirement under this subsection by sending a certain notice to the victim by certified mail on any one occasion during a certain period. Deletes existing text requiring the department, not earlier than a certain date and if the victim has not made a claim for payment, to transfer from the interest-bearing account to the Texas comptroller of public accounts (comptroller) all payments received. Deletes existing text requiring the department, after making an initial transfer of payments to the comptroller and not later than a certain date, to transfer the subsequent payment to the comptroller. Deletes existing text requiring the department to deduct five percent of the payment or subsequent payment as a collection fee and deduct any interest accrued on the payment or subsequent payment before transferring the payment to the comptroller. Deletes existing text requiring the comptroller to deposit the payment in the state treasury to the credit of the auxiliary fund.

(b-1) Requires the department, if a victim makes a claim for restitution payment with the department, to promptly remit to the victim all restitution payments received by the department from the defendant for transmittal to the victim.

(b-2) Provides that, if a victim who is entitled to restitution does not make a claim for payment before a certain date or if, after the victim makes a claim for payment, the department is unable to locate the victim for a period of five years after a certain date, any unclaimed restitution payments (URPs) being held by the department for payment to the victim are presumed abandoned. Requires the department to report and deliver to the comptroller all URPs presumed abandoned under this section (Restitution), less a collection fee of one and one-half percent, in the manner provided by Chapter 77, Property Code, which is added by this Act.

(b-3) Requires the department, if on March 1 a department is not holding URPs that are presumed abandoned, to file a property report under Section 77.051, Property Code, that certifies that the department is not holding any URPs that are presumed abandoned.

(c) Requires that the collection fee under Subsection (b-2) and the accrued interest under Subsection (a), rather than the collection fee under Subsection (b) and the accrued interest under Subsections (a) and (b), be deposited in a certain fund for certain purposes. Deletes existing text providing that the department has a maximum of 121 days after the five-year expiration date to transfer the funds to the Office of the Texas Comptroller of Public Accounts (comptroller's office) and that failure to comply with the 121-day deadline will result in a certain penalty fee.

SECTION 3. Amends Section 508.322, Government Code, by amending Subsection (e) and adding Subsection (f), as follows:

(e) Provides that, if a victim who is entitled to restitution does not make a claim for payment before a certain date or if, after the victim makes a claim for payment, the Texas Department of Criminal Justice (TDCJ) is unable to locate the victim for a period of five years after a certain date, any URPs being held by TDCJ for payment to the victim are presumed abandoned. Requires TDCJ to report and deliver to the comptroller all URPs presumed abandoned under this section (Releasee Restitution Fund) in the manner provided by Chapter 77, Property Code. Deletes existing text requiring that money that remains unclaimed be transferred to the auxiliary fund on a certain date.

(f) Requires the department, if on March 1 a department is not holding URPs that are presumed abandoned, to file a property report under Section 77.051, Property Code, that certifies that the department is not holding any URPs that are presumed abandoned.

SECTION 4. Amends Title 6, Property Code, by adding Chapter 77, as follows:

CHAPTER 77. REPORT, DELIVERY, AND CLAIMS PROCESS FOR UNCLAIMED RESTITUTION PAYMENTS

SUBCHAPTER A. APPLICABILITY

Sec. 77.001. APPLICABILITY. Provides that this chapter applies to URPs that are presumed abandoned under Section 76.013 or 508.322, Government Code.

SUBCHAPTER B. PROPERTY REPORT

Sec. 77.051. PROPERTY REPORT. (a) Requires that each holder who on March 1 holds a URP that is presumed abandoned under Section 76.013 or 508.322, Government Code, notwithstanding certain confidentiality provisions, file a property report (report) with the comptroller on or before the following July 1. Authorizes the comptroller to prescribe the form to be used for the required report and to require the report to be filed electronically.

(b) Requires that the report include certain information, if known by the holder.

(c) Requires a holder who is required by Subsection (a) to file a report in any year to file a report each successive year thereafter. Requires a person, if the person required to file a report is not holding any restitution payments that are presumed abandoned under Section 76.013 or 508.322, Government Code, to certify that the person is not holding any restitution payments that are presumed abandoned under those sections.

Sec. 77.052. NOTICE BY HOLDER REQUIRED. Requires a holder who on March 1 holds a URP that is presumed abandoned under Section 76.013 or 508.322, Government Code, on or before the following May 1, to mail to the last known address of the victim entitled to the URP written notice that provides certain information.

Sec. 77.053. SIGNED STATEMENT. (a) Requires the person preparing a required report to provide with each copy of the report a statement signed by the holder's chief fiscal officer, as designated by the holder. Authorizes the required signature to be in an electronic or other form prescribed by the comptroller and requires that the signature have the same effect as an original signature.

(b) Requires that the statement include a certain sentence and sets forth the required language for that sentence.

Sec. 77.054. CONFIDENTIALITY OF PROPERTY REPORT. (a) Provides that the report filed with the comptroller under Section 77.051 is confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code.

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

Sec. 77.055. EXCEPTION TO LIABILITY. (a) Provides that it is an exception to the application of Section 552.352 (Distribution of Misuse of Confidential Information), Government Code, that the comptroller or an officer or employee of the comptroller's office published or disclosed information in reliance on the report filed with the comptroller under Section 77.051.

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

SUBCHAPTER C. NOTICE BY COMPTROLLER

Sec. 77.101. NOTICE. Authorizes the comptroller to use one or more methods as necessary to provide the most efficient and effective notice to victims that the comptroller is holding URPs that are subject to this chapter.

Sec. 77.102. PUBLICATION. Authorizes the comptroller, notwithstanding Section 77.054, to publish on the Internet information regarding URPs received by the comptroller, except that the comptroller is prohibited from publishing information that identifies a person as a victim or information that identifies a victim's address. Provides that, for the purposes of this subsection, the victim's address includes information that identifies a victim's place of residence or post office box but does not include the city or county in which the victim resides.

SUBCHAPTER D. DELIVERY.

Sec. 77.151. DELIVERY OF PROPERTY TO COMPTROLLER. Requires that each holder who on March 1 holds a URP that is presumed abandoned under Section 76.013 or 508.322, Government Code, deliver the property to the comptroller on or before the following July 1 accompanied by the report required to be filed under Section 77.051.

Sec. 77.152. RESPONSIBILITY AFTER DELIVERY. (a) Requires the state, if a URP that is presumed abandoned under Section 76.013 or 508.322, Government Code, is reported and delivered to the comptroller, to assume custody of the URP and responsibility for its safekeeping.

(b) Provides that a holder who delivers a URP to the comptroller in compliance with this chapter is relieved of all liability to the extent of the value of the URP delivered for any claim then existing, that may arise after delivery to the comptroller, or that may be made with respect to the URP.

(c) Requires the attorney general, if the holder delivers a URP to the comptroller in good faith and, after delivery, a person claims the property from the holder, to, on written notice of the claim, defend the holder against the claim, and requires that the holder be indemnified against any liability on the claim.

SUBCHAPTER E. CLAIM FOR DELIVERED PROPERTY

Sec. 77.201. CLAIM FILED WITH COMPTROLLER. (a) Requires the comptroller to review the validity of each claim for a URP filed under this section.

(b) Requires the comptroller, if the comptroller determines a claim for a URP is valid, to approve the claim and requires the comptroller to pay a claim if the claim is approved.

(c) Requires that all claims to which this section applies be filed in accordance with the procedures, contain the information, and be on forms prescribed by the comptroller.

(d) Authorizes the comptroller to approve certain claims on receipt of a claim form and all necessary documentation as may be appropriate under the circumstances.

(e) Prohibits the comptroller, except as provided by Subsections (f) and (g), from approving the claim of or paying a claim to certain persons.

(f) Authorizes the comptroller to approve a claim for child support arrearages owed by the victim and reflected in a child support lien notice that complies with Section 157.313 (Contents of Child Support Lien Notice), Family Code, and authorizes a claim under this subsection to be submitted by the lienholder.

(g) Authorizes the comptroller to approve a claim for debts owed by the victim to the state or any state agency and authorizes a claim under this subsection to be submitted by the attorney general or the comptroller on behalf of the state or state agency.

Sec. 77.202. CLAIMS NOT ASSIGNABLE. Prohibits an interest in a claim under this chapter from being assigned, notwithstanding Section 9.406(f) (relating to providing that a certain rule of law, statute, or regulation is ineffective to a certain extent), Business & Commerce Code.

Sec. 77.203. CLAIM FILED WITH HOLDER. (a) Authorizes the holder, if a claim for a URP is filed with the holder under this section and the holder determines in good faith that the claim is valid, to pay the amount of the claim.

(b) Authorizes the comptroller to reimburse the holder for a valid claim paid under this section.

(c) Requires that the request from a holder for reimbursement be filed in accordance with procedures and on forms prescribed by the comptroller and prohibits the request from exceeding the amount previously reported and delivered by the holder to the comptroller.

(d) Prohibits the comptroller from reimbursing a holder for a claim paid to a person the comptroller is not permitted to pay under Section 77.201(e).

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

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

(b) Authorizes the claimant, if a claim has not been decided before the 91st day after the day on which it was filed, to appeal within the 60-day period beginning on the 91st day after the day of filing.

(c) Requires that an appeal be made by filing suit against the state in a district court in Travis County.

(d) Requires a court to try a filed action de novo and to apply the rules of practice of the court.

Sec. 77.205. **LIMITATION OF LIABILITY.** Provides that the liability of the state is limited to the extent of the property delivered under this chapter and remaining in the possession of the comptroller at the time a suit is filed.

Sec. 77.206. **FEE FOR RECOVERY.** (a) Prohibits a person who informs a potential claimant that the claimant may be entitled to claim property under this chapter from contracting for or receiving from the claimant for services an amount that exceeds 10 percent of the value of the property recovered.

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

SUBCHAPTER F. UNCLAIMED PAYMENTS

Sec. 77.251. **UNCLAIMED RESTITUTION PAYMENTS.** (a) Requires the comptroller to maintain a record that documents URPs received under this chapter.

(b) Requires the comptroller to deposit all URPs to the credit of the auxiliary fund in the state treasury.

(c) Requires that income or interest derived from URPs deposited in the auxiliary fund remain in the auxiliary fund.

Sec. 77.252. **USE OF MONEY.** (a) Authorizes money in the auxiliary fund, except as provided by Subsection (b) and Chapter 56 (Rights of Crime Victims), Code of Criminal Procedure, to only be used to pay claims as provided by this chapter and provides that it is not available for any other purpose. Provides that Section 403.095 (Use of Dedicated Revenue), Government Code, does not apply to the auxiliary fund.

(b) Authorizes the legislature to appropriate money in the auxiliary fund to cover costs incurred by the comptroller in administering this chapter.

Sec. 77.253. **EXCESS CLAIMS.** Authorizes the comptroller to pay a claim under this chapter that is more than the money available in the auxiliary fund using funds appropriated by the legislature for paying claims under this title (Unclaimed Property).

SUBCHAPTER G. ENFORCEMENT

Sec. 77.301. **RULES.** Authorizes the comptroller to adopt rules necessary to carry out this chapter.

Sec. 77.302. **EXAMINATION OF RECORDS.** (a) Authorizes the comptroller, the attorney general, or an authorized agent of either, in order to enforce this chapter and to determine whether reports have been made as required by this chapter, to examine the books and records of any holder at any reasonable time and place.

(b) Prohibits the comptroller, the attorney general, or an agent of either from making public any information obtained by an examination made under this section and from disclosing that information except in the course of a judicial proceeding, authorized by this chapter, in which the state is a party or under an agreement with another state allowing joint audits or the exchange of information obtained under this section.

Sec. 77.303. AUTHORITY TO TAKE TESTIMONY AND ISSUE ADMINISTRATIVE SUBPOENAS. (a) Authorizes the comptroller or the comptroller's designee, in addition to the authority to examine granted by Section 77.302, to enforce this chapter and to determine whether reports have been made as required by this chapter, to take testimony, administer oaths, and issue subpoenas to compel any person, at a time and place reasonable under the circumstances, to appear and give testimony, and to produce certain relevant data, in whatever form, for audit, inspection, and copying.

(b) Authorizes a person authorized to serve process under the Texas Rules of Civil Procedure (Rules) to serve a subpoena issued under Subsection (a) and requires the person to serve the subpoena in accordance with the Rules.

Sec. 77.304. ENFORCEMENT OF SUBPOENAS. (a) Requires the attorney general, if the person to whom a subpoena is directed under Section 77.303 fails to comply with the subpoena, or fails to file a motion to quash or otherwise demand a pre-compliance review of the subpoena, to bring suit to enforce the subpoena within the return date specified in the subpoena, on the request of the comptroller.

(b) Requires a court that determines that the subpoena was issued in good faith to order compliance with the subpoena and authorizes the court to apply penalties for civil and criminal contempt otherwise available at law where a person refuses to comply with the court's order.

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

Sec. 77.306. ASSISTANCE IN ENFORCEMENT. Requires any state agency, county clerk, district clerk, county attorney, or district attorney to assist the comptroller or attorney general in enforcing this chapter if the comptroller or attorney general requests.

Sec. 77.307. PENALTY. Requires that a penalty equal to a certain amount be imposed on a holder who fails to pay or deliver the payment within the time prescribed by this chapter. Requires that an additional penalty equal to a certain amount be imposed if a holder fails to pay or deliver a URP before the 121st day after the date the URP is due.

Sec. 77.308. WAIVER OR ABATEMENT OF PENALTY. Authorizes the comptroller to waive any penalty or interest imposed under this chapter.

SECTION 5. Repealer: Article 56.54(c) (relating to authorizing the auxiliary fund to be used by the attorney general only for the payment of compensation to certain persons), Code of Criminal Procedure.

Repealer: Section 76.013(d) (relating to requiring the department and the comptroller to pay the victim a certain amount depending on certain circumstances), Government Code.

SECTION 6. Requires OAG and the comptroller, as soon as is practicable after the effective date of this Act, but not later than January 1, 2018, to establish a plan for the identification and transfer of records, property, and unspent appropriations of the attorney general that are used for the purpose of managing the auxiliary fund.

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

SECTION 8. Effective date: September 1, 2017.