

## CHAPTER 805

H.B. No. 2178

## AN ACT

relating to compensation of victims of certain crimes.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 56.54, Code of Criminal Procedure, as added by S.B. 248, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subsections (f) and (g) to read as follows:

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

(g) *Money in the compensation to victims of crime fund or in the compensation to victims of crime auxiliary fund may be used only as provided by this subchapter and is not available for any other purpose.*

SECTION 2. Section 56.57, Code of Criminal Procedure, as added by S.B. 248, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

Sec. 56.57. DEPOSIT BY COMPTROLLER; AUDIT. (a) The comptroller shall deposit the funds received under Section 56.56 of this code *and all other moneys credited to the fund by any other provision of law* in the compensation to victims of crime fund.

(b) Funds collected are subject to audit by the comptroller. Funds spent are subject to audit by the state auditor.

SECTION 3. Section 56.32(3), Code of Criminal Procedure, as added by S.B. 248, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(3) "Collateral source" means any of the following sources of benefits or advantages for pecuniary loss that a victim has received or that is readily available to the victim:

(A) the offender under an order or restitution to the claimant imposed by a court as a condition of probation;

(B) the United States, a federal agency, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them in excess of or secondary to benefits under this subchapter;

(C) social security, Medicare, or Medicaid;

(D) state-required temporary nonoccupational disability insurance;

(E) workers' compensation;

(F) an employer's wage continuation program;

(G) proceeds of an insurance contract payable to the victim for loss that the victim sustained because of the criminally injurious conduct; [ø]

(H) a contract providing prepaid hospital and other health care services or benefits for disability;

(I) *proceeds awarded to the victim as a result of third-party litigation; or*

(J) *proceeds of a life insurance contract payable to the claimant.*

SECTION 4. Section 56.32(8), Code of Criminal Procedure, as added by S.B. 248, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(8) "Pecuniary loss" means the amount of expense reasonably and necessarily incurred:

(A) as a result of personal injury for:

(i) medical, hospital, nursing, or psychiatric care or counseling, or physical therapy;

(ii) actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury; and

(iii) care of a minor child enabling a victim or a victim's spouse, but not both of them, to continue gainful employment; [and]

(B) as a result of death for:

(i) funeral and burial expenses;

(ii) loss of support to a dependent; and

(iii) care of a minor child enabling the surviving spouse of a victim to engage in lawful employment.

(C) "Pecuniary loss" does not include health care service charges in excess of the fee guidelines established by the Texas Workers' Compensation Act (Article 8308-8.21 et seq., Vernon's Texas Civil Statutes). Neither the office of the attorney general, victims, nor claimants shall be responsible for health care service charges in excess of the fee guidelines unless a review of the health care services determines that there is a reasonable health care justification for the deviation.

SECTION 5. Section 56.55(a), Code of Criminal Procedure, as added by S.B. 248, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(a) A person shall pay:

(1) \$45 [~~\$20~~] as a court cost on conviction of a felony;

(2) \$35 [~~\$15~~] as a court cost on conviction of a violation of a municipal ordinance punishable by a fine of more than \$200 or on conviction of a misdemeanor punishable by imprisonment or by a fine of more than \$500; or

(3) \$15 [~~\$5~~] as a court cost on conviction of a violation of a municipal ordinance punishable by a fine of not more than \$200 or on conviction of a misdemeanor punishable by a fine of not more than \$500, other than a conviction of a misdemeanor offense or a violation of a municipal ordinance relating to pedestrians and the parking of motor vehicles.

SECTION 6. Section 56.47(c), Code of Criminal Procedure, as added by S.B. 248, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(c) An order on reconsideration may not require refund of amounts previously paid unless the award was obtained by fraud or mistake.

SECTION 7. Section 22, Article 42.12, Code of Criminal Procedure, is amended by adding Subsections (e) and (f) to read as follows:

(e) If the court grants probation to a person convicted of an offense under Section 21.08, 21.11, 22.011, 22.021, 25.02, 25.06, 43.25, or 43.26, Penal Code, the court shall require as a condition of probation that the person pay to the probation officer supervising the person a probation fee of \$5 each month during the period of probation. The fee is in addition to court costs or any other fee imposed on the person.

(f) A probation department shall remit fees collected under Subsection (e) of this section to the comptroller. The comptroller shall deposit the fee in the special revenue fund to the credit of the sexual assault program established under Section 44.0061, Health and Safety Code.

SECTION 8. Section 8, Article 42.18, Code of Criminal Procedure, is amended by adding Subsections (o), (p), and (q) to read as follows:

(o) In addition to other conditions of parole and release on mandatory supervision imposed under this section, a parole panel shall require a prisoner released on parole or mandatory supervision to pay an administrative fee of \$8 to the pardons and paroles division for each month during which the prisoner is under parole supervision. The fee applies to a prisoner released in another state who is required as a term of his release to report to a parole officer or supervisor in this state for parole supervision. On the request of the prisoner, a parole panel may allow the prisoner to defer payments under this subsection. The prisoner remains responsible for payment of the fee and must make the deferred payment not later than two years after the date on which the payment becomes due. The board of the Texas Department of Criminal Justice shall establish rules relating to the method of payment required of the person on parole or mandatory supervision. Fees

collected under this subsection by the pardons and paroles division shall be remitted to the comptroller of public accounts, who shall deposit the fees in the compensation to victims of crime fund of the state treasury. In a parole or mandatory supervision revocation hearing under Section 14 of this article at which it is alleged only that the person failed to make a payment under this subsection, the inability of the person to pay as ordered by a parole panel is an affirmative defense to revocation, which the person must prove by a preponderance of the evidence.

(p) In addition to other conditions and fees imposed by a parole panel under this article, the parole panel shall require as a condition of parole or release to mandatory supervision that a prisoner convicted of an offense under Section 21.08, 21.11, 22.011, 22.021, 25.02, 25.06, 43.25, or 43.26, Penal Code, pay to the pardons and paroles division a parole supervision fee of \$5 each month during the period of parole supervision.

(q) The pardons and paroles division shall remit fees collected under Subsection (p) of this section to the comptroller. The comptroller shall deposit the fees in the general revenue fund to the credit of the sexual assault program fund established by Section 44.0061, Health and Safety Code.

SECTION 9. Section 56.43(a), Code of Criminal Procedure, as added by S.B. 248, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(a) As part of an order, the attorney general shall determine and award reasonable attorney's fees, commensurate with legal services rendered, to be paid by the state to the attorney representing the claimant. Attorney fees shall not exceed 25 percent of the amount the attorney assisted the victim in obtaining. Where there is no dispute of the attorney general's determination of the amount of the award due to the claimant and where no hearing is held, the attorney fee shall be the lesser of either 25 percent of the amount the attorney assisted the claimant in obtaining or \$300.

SECTION 10. Section 56.37, Code of Criminal Procedure, as added by S.B. 248, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subsection (e) to read as follows:

(e) If the victim is a child, the application must be filed within one year from the date the claimant is made aware of the crime but not after the child is 18 years of age.

SECTION 11. Section 56.52, Code of Criminal Procedure, as added by S.B. 248, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subsections (c) and (d) to read as follows:

(c) A claimant shall not settle or resolve any such action without written authorization to do so from the attorney general. No third party or agents, insurers, or attorneys for third parties shall participate in the settlement or resolution of such an action if they actually know, or should know, that the claimant has received moneys from the fund and is subject to the subrogation provisions of this section. Any attempt by such third party, or agents, insurers, or attorneys of third parties to settle an action is void and shall result in no release from liability to the fund for any rights subrogated pursuant to this section. All such agents, insurers, and attorneys are personally liable to the fund for any moneys paid to a claimant in violation of this subsection, up to the full amount of the fund's right to reimbursement. A claimant, third party, or any agents, attorneys, or insurers of third parties who knowingly or intentionally fail to comply with the requirements of this chapter commits a Class B misdemeanor.

(d) A person adjudged guilty of a Class B misdemeanor shall be punished by:

- (1) a fine not to exceed \$500;
- (2) confinement in jail for a term not to exceed 180 days; or
- (3) both such fine and imprisonment.

SECTION 12. Subchapter A, Chapter 44, Health and Safety Code, is amended by adding Section 44.0061 to read as follows:

Sec. 44.0061. SEXUAL ASSAULT PROGRAM FUND. (a) The sexual assault program fund is a special account in the general revenue fund.

*(b) The fund consists of fees collected under Section 22(e), Article 42.12, and Section 8(p), Article 42.18, Code of Criminal Procedure.*

*(c) The legislature may appropriate money deposited to the credit of the fund only to the department to finance the grant program created by this chapter.*

SECTION 13. (a) The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. For purposes of this Act, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the laws in effect when the offense is committed, and the former law is continued in effect for this purpose.

SECTION 14. This Act takes effect immediately.

SECTION 15. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 12, 1993, by a non-record vote; passed by the Senate on May 27, 1993: Yeas 31, Nays 0.

Approved June 18, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.