

CHAPTER 983

S.B. No. 209

AN ACT

relating to the crime victims compensation fund; providing civil and administrative penalties.

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

SECTION 1. The Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes) is amended by adding Section 5 to read as follows:

Sec. 5. *UTILIZATION REVIEW.* (a) *The attorney general may adopt rules under which the attorney general may conduct or contract for a utilization review of applications for benefits or claims for pecuniary loss relating to psychological, psychiatric, or other mental health services.*

(b) *In this section, "utilization review" means a system for prospective, concurrent, or retrospective review of the necessity and appropriateness of services being provided or proposed to be provided to a victim.*

SECTION 2. Subsection (a), Section 9, Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) *The attorney general on the attorney general's own motion or on request of the claimant may reconsider a decision making or denying an award or determining its amount. The attorney general shall reconsider at least annually every award being paid in installments. An order on reconsideration of an award shall not require refund of amounts previously paid unless the award was paid by mistake or obtained by fraud.*

SECTION 3. The Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes) is amended by adding Sections 10A, 10B, and 10C to read as follows:

Sec. 10A. *PUBLIC LETTER OF REPRIMAND.* (a) *The attorney general may issue a letter of reprimand against a person if the attorney general finds that the person has filed or has caused to be filed under this Act an application for benefits or claim for pecuniary loss that contains a statement or representation that the person knows to be false.*

(b) *The attorney general must give the person notice of the proposed action before issuing the letter.*

(c) *A proposal to issue a letter of reprimand is considered a contested case for purposes of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.*

(d) *A letter of reprimand issued under this section is public information.*

Sec. 10B. *CIVIL PENALTY.* (a) *A person is subject to a civil penalty of not less than \$2,500 or more than \$25,000 for each application for benefits or claim for pecuniary loss that the person files or causes to be filed under this Act that contains a statement or representation that the person knows to be false.*

(b) *The attorney general shall institute and conduct the suit authorized by this section in the name of this state.*

(c) *A civil penalty recovered under this section shall be deposited to the credit of the Compensation to Victims of Crime Fund.*

(d) *The civil penalty authorized by this section is in addition to any other civil, administrative, or criminal penalty provided by law.*

(e) *In addition to the civil penalty authorized by this section, the attorney general may recover all expenses incurred by the attorney general in the investigation, institution, and prosecution of the suit including investigative costs, witness fees, attorney fees, and deposition expenses.*

Sec. 10C. *ADMINISTRATIVE PENALTY.* (a) *A person who presents or causes to be presented to the attorney general an application for benefits or claim for pecuniary loss that contains a statement or representation the person knows to be false is liable to the attorney general for:*

(1) *the amount paid because of the false application for benefits or claim for pecuniary loss and interest on that amount determined at the rate provided by law for legal judgments and accruing from the date on which the payment was made;*

(2) *payment of an administrative penalty not to exceed twice the amount paid because of the false application for benefits or claim for pecuniary loss; and*

(3) *payment of an administrative penalty of not more than \$10,000 for each item or service for which payment was claimed.*

(b) In determining the amount of the penalty to be assessed under Subdivision (3) of Subsection (a) of this section, the attorney general shall consider:

- (1) the seriousness of the violation;
- (2) whether the person had previously submitted a false application for benefits or claim for pecuniary loss; and
- (3) the amount necessary to deter the person from submitting future false applications for benefits or claims for pecuniary loss.

(c) If the attorney general determines that a violation has occurred, the attorney general may issue a report that states the facts on which the determination is made and the attorney general's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(d) The attorney general shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(e) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the attorney general or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) If the person accepts the determination and recommended penalty of the attorney general, the attorney general by order shall approve the determination and impose the recommended penalty.

(g) If the person requests a hearing or fails to respond timely to the notice, the attorney general shall set a hearing and give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the attorney general a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. According to the findings of fact, conclusions of law, and proposal for a decision, the attorney general by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(h) The notice of the attorney general's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments must include a statement of the right of the person to judicial review of the order.

(i) Within 30 days after the date the attorney general's order is final as provided by Subsection (c) of Section 16, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments, the person shall:

- (1) pay the amount of the penalty;
- (2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(j) Within the 30-day period, a person who acts under Subdivision (3) of Subsection (i) of this section may:

- (1) stay enforcement of the penalty by:
 - (A) paying the amount of the penalty to the court for placement in an escrow account; or
 - (B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the attorney general's order is final; or
- (2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the attorney general by certified mail.

(k) On receipt by the attorney general of a copy of an affidavit under Subdivision (2) of Subsection (j) of this section, the attorney general may file, with the court within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(l) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the attorney general may file suit for collection of the amount of the penalty.

(m) Judicial review of the order of the attorney general:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) is under the substantial evidence rule.

(n) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(o) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(p) A penalty collected under this section shall be sent to the comptroller and deposited to the credit of the Compensation to Victims of Crime Fund.

(q) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

(r) In addition to the administrative penalty authorized by this section, the attorney general may recover all expenses incurred by the attorney general in the investigation, institution, and prosecution of the suit including investigative costs, witness fees, attorney fees, and deposition expenses.

SECTION 4. Sections 10A, 10B, and 10C, Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes), as added by Section 3 of this Act, apply only to an application for benefits or claim for pecuniary loss that is filed on or after the effective date of this Act. An application for benefits or claim for pecuniary loss that is filed before the effective date of this Act is governed by the law in effect when the application for benefits or claim for pecuniary loss was filed, and that law is continued in effect for that purpose.

SECTION 5. 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 the Senate on March 25, 1993: Yeas 31, Nays 0; passed the House on May 21, 1993, by a non-record vote.

Approved June 19, 1993.

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