

BILL ANALYSIS

H.B. 2720
By: Vaught
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current law does not expressly authorize the attorney general to demand a refund of overpayments made to victims, claimants or providers, except in cases of fraudulent application. House Bill 2720 would authorize the attorney general to obtain reimbursement from overpayments made to victims, claimants, and providers from the crime victims compensation fund.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

House Bill 2720 amends the Code of Criminal Procedure to provide that if a person is erroneously overpaid under this subchapter, the person is liable for the overpaid amount and must repay the overpayment.

If the attorney general determines that a person was erroneously overpaid, the attorney general is allowed to issue a report that states the facts on which the determination is made and the recommendation that the overpayment be repaid. The attorney general must give written notice of the report to the overpaid person. This notice may be given by certified mail and must include a brief summary of the alleged overpayment, documentation substantiating the amount of the overpayment, notice of the opportunity for the person to repay the overpayment in increments, as approved by the attorney general, and notice that the person has the right to a hearing on the occurrence of the overpayment or the amount of the overpayment.

The person must submit a full repayment of the amount owed, a written acceptance of the attorney general's approved incremental repayment plan, or a written request for a hearing on the occurrence of the overpayment or the amount of the overpayment, not later than the 45th day after the date the person receives the notice. If the person fails to comply with this, the attorney general is allowed to certify to the comptroller that the overpaid amount constitutes a debt for purposes of Section 403.055, Government Code. The comptroller is authorized certify the amount of the debt to the attorney general for collection.

If the person requests a hearing, the attorney general must set a contested case hearing under Chapter 2001, Government Code, and notify the person of the hearing. An employee of the State Office of Administrative Hearings may not conduct a hearing or render a final decision under this article. The hearing officer is required to make findings of facts and conclusions of law and promptly issue to the attorney general a proposal for a decision regarding the occurrence and amount of the overpayment. Based on the findings of fact, conclusions of law, and proposal for a decision, the attorney general by order is authorized to find that an overpayment has occurred and set the amount to be repaid, or find that an overpayment has not occurred.

Notice of the attorney general's order given to the person under Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order. The person is required to pay the amount of the ordered repayment, pay the amount of the ordered repayment and file a petition for judicial review contesting the occurrence of the overpayment or

the amount of the overpayment, or without paying the amount of the ordered repayment, file a petition for judicial review contesting the occurrence of the overpayment or the amount of the overpayment not later than the 30th day after the date that the attorney general's order is final.

Within the 30-day period, a person who does not pay the amount of the ordered repayment and files a petition for judicial review may stay enforcement of the ordered repayment by paying the amount of the ordered repayment to the court for placement in an escrow account or by giving to the court a supersedeas bond that is approved by the court for the amount of the ordered repayment and that is effective until all judicial review of the attorney general's order is final.

This person may also request the court to stay enforcement of the repayment order by filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the ordered repayment or to give the supersedeas bond and by delivering a copy of the affidavit to the attorney general by certified mail. On receipt by the attorney general of a copy of this affidavit, the attorney general may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court is required to hold a hearing on the facts alleged in the affidavit as soon as practicable and must stay the enforcement of the repayment order on finding that the alleged facts are true. The person who files the affidavit has the burden of proving that the person is financially unable to pay the amount of the ordered repayment or to give a supersedeas bond. If the person does not pay the amount of the ordered repayment and the enforcement of the ordered repayment is not stayed, the attorney general may file suit for collection of the amount of the ordered repayment.

Judicial review of the order of the attorney general is instituted by filing a petition as provided by Section 2001.176, Government Code, and is governed by the substantial evidence rule. If the court upholds the finding that an overpayment occurred, the court is allowed to order the person to pay the full or reduced amount of the ordered repayment. If the court does not uphold the finding, the court must order that no repayment is owed. If the person paid the amount of the ordered repayment and if that amount is reduced or is not upheld by the court, the court is required to 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 must be paid for the period beginning on the date the ordered repayment was paid and ending on the date the repayment is remitted. If the person gave a supersedeas bond and if the amount of the repayment is not upheld by the court, the court must order the release of the bond. If the person gave a supersedeas bond and if the amount of the repayment is reduced, the court is required to order the release of the bond after the person pays the amount.

The collected ordered repayment must be sent to the comptroller and deposited to the credit of the compensation to victims of crime fund. All proceedings under this Act are subject to Chapter 2001, Government Code. In addition to the ordered repayment authorized by this article, 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's fees, and deposition expenses.

EFFECTIVE DATE

September 1, 2007.