

By: Vaught

H.B. No. 2720

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the authority of the attorney general to obtain
3 reimbursement to the compensation to victims of crime fund
4 resulting from overpayments made to victims, claimants, and
5 providers.

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

7 SECTION 1. Subchapter B, Chapter 56, Code of Criminal
8 Procedure, is amended by adding Article 56.65 to read as follows:

9 Art. 56.65. REPAYMENT OF OVERPAYMENTS. (a) If a person is
10 erroneously overpaid under this subchapter, the person is liable
11 for the overpaid amount and shall repay the overpayment.

12 (b) If the attorney general determines that a person was
13 erroneously overpaid under this subchapter, the attorney general
14 may issue a report that states the facts on which the determination
15 is made and the attorney general's recommendation that the
16 overpayment be repaid.

17 (c) The attorney general shall give written notice of the
18 report to the person. Notice under this subsection may be given by
19 certified mail and must include:

20 (1) a brief summary of the alleged overpayment;

21 (2) documentation substantiating the amount of the
22 overpayment;

23 (3) notice of the opportunity for the person to repay
24 the overpayment in increments, as approved by the attorney general;

1 and

2 (4) notice that the person has the right to a hearing
3 on:

4 (A) the occurrence of the overpayment; or

5 (B) the amount of the overpayment.

6 (d) Not later than the 45th day after the date the person
7 receives the notice, the person shall submit:

8 (1) a full repayment of the amount owed;

9 (2) a written acceptance of the attorney general's
10 approved incremental repayment plan; or

11 (3) a written request for a hearing on:

12 (A) the occurrence of the overpayment; or

13 (B) the amount of the overpayment.

14 (e) If the person fails to comply with Subsection (d), the
15 attorney general may certify to the comptroller that the overpaid
16 amount constitutes a debt for purposes of Section 403.055,
17 Government Code. The comptroller may certify the amount of the debt
18 to the attorney general for collection.

19 (f) If the person requests a hearing as provided by
20 Subsection (c), the attorney general shall set a contested case
21 hearing under Chapter 2001, Government Code, and notify the person
22 of the hearing. An employee of the State Office of Administrative
23 Hearings may not conduct a hearing or render a final decision under
24 this article. The hearing officer shall make findings of facts and
25 conclusions of law and promptly issue to the attorney general a
26 proposal for a decision regarding the occurrence and amount of the
27 overpayment. Based on the findings of fact, conclusions of law, and

1 proposal for a decision, the attorney general by order may:

2 (1) find that an overpayment has occurred and set the
3 amount to be repaid; or

4 (2) find that an overpayment has not occurred.

5 (g) Notice of the attorney general's order given to the
6 person under Chapter 2001, Government Code, must include a
7 statement of the person's right to judicial review of the order.

8 (h) Not later than the 30th day after the date that the
9 attorney general's order is final under Section 2001.144,
10 Government Code, the person shall:

11 (1) pay the amount of the ordered repayment;

12 (2) pay the amount of the ordered repayment and file a
13 petition for judicial review contesting:

14 (A) the occurrence of the overpayment; or

15 (B) the amount of the overpayment; or

16 (3) without paying the amount of the ordered
17 repayment, file a petition for judicial review contesting:

18 (A) the occurrence of the overpayment; or

19 (B) the amount of the overpayment.

20 (i) Within the 30-day period, a person who acts under
21 Subsection (h)(3) may:

22 (1) stay enforcement of the ordered repayment by:

23 (A) paying the amount of the ordered repayment to
24 the court for placement in an escrow account; or

25 (B) giving to the court a supersedeas bond that
26 is approved by the court for the amount of the ordered repayment and
27 that is effective until all judicial review of the attorney

1 general's order is final; or

2 (2) request the court to stay enforcement of the
3 repayment order by:

4 (A) filing with the court a sworn affidavit of
5 the person stating that the person is financially unable to pay the
6 amount of the ordered repayment or to give the supersedeas bond;
7 and

8 (B) delivering a copy of the affidavit to the
9 attorney general by certified mail.

10 (j) On receipt by the attorney general of a copy of an
11 affidavit under Subsection (i)(2), the attorney general may file
12 with the court, not later than the fifth day after the date the copy
13 is received, a contest to the affidavit. The court shall hold a
14 hearing on the facts alleged in the affidavit as soon as practicable
15 and shall stay the enforcement of the repayment order on finding
16 that the alleged facts are true. A person who files an affidavit
17 under Subsection (i)(2) has the burden of proving that the person is
18 financially unable to pay the amount of the ordered repayment or to
19 give a supersedeas bond.

20 (k) If the person does not pay the amount of the ordered
21 repayment and the enforcement of the ordered repayment is not
22 stayed, the attorney general may file suit for collection of the
23 amount of the ordered repayment.

24 (l) Judicial review of the order of the attorney general:

25 (1) is instituted by filing a petition as provided by
26 Section 2001.176, Government Code; and

27 (2) is governed by the substantial evidence rule.

1 (m) If the court upholds the finding that an overpayment
2 occurred, the court may order the person to pay the full or reduced
3 amount of the ordered repayment. If the court does not uphold the
4 finding, the court shall order that no repayment is owed.

5 (n) If the person paid the amount of the ordered repayment
6 and if that amount is reduced or is not upheld by the court, the
7 court shall order that the appropriate amount plus accrued interest
8 be remitted to the person. The rate of the interest is the rate
9 charged on loans to depository institutions by the New York Federal
10 Reserve Bank, and the interest shall be paid for the period
11 beginning on the date the ordered repayment was paid and ending on
12 the date the repayment is remitted. If the person gave a
13 supersedeas bond and if the amount of the repayment is not upheld by
14 the court, the court shall order the release of the bond. If the
15 person gave a supersedeas bond and if the amount of the repayment is
16 reduced, the court shall order the release of the bond after the
17 person pays the amount.

18 (o) An ordered repayment collected under this article shall
19 be sent to the comptroller and deposited to the credit of the
20 compensation to victims of crime fund.

21 (p) All proceedings under this article are subject to
22 Chapter 2001, Government Code.

23 (q) In addition to the ordered repayment authorized by this
24 article, the attorney general may recover all expenses incurred by
25 the attorney general in the investigation, institution, and
26 prosecution of the suit, including investigative costs, witness
27 fees, attorney's fees, and deposition expenses.

1 SECTION 2. This Act takes effect September 1, 2007.