

# SENATE AMENDMENTS

## 2<sup>nd</sup> Printing

By: Thompson of Harris, S. Davis of Harris,  
J. Davis of Harris, Turner of Harris,  
Naishtat, et al.

H.B. No. 1445

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the distribution of certain civil penalties and civil  
3 restitution received by the attorney general.

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

5 SECTION 1. Section 402.007, Government Code, is amended to  
6 read as follows:

7 Sec. 402.007. PAYMENT TO TREASURY; ALLOCATION OF CERTAIN  
8 MONEY RECEIVED BY ATTORNEY GENERAL [~~PENALTIES~~]. (a) The attorney  
9 general shall immediately pay into the state treasury money  
10 received for a debt, a [ex] penalty, or restitution.

11 (b) Subject to Subsection (d) [~~(c)~~], the comptroller shall  
12 credit to the judicial fund for programs approved by the supreme  
13 court that provide basic civil legal services to the indigent the  
14 net amount of:

15 (1) a civil penalty that is recovered in an action by  
16 the attorney general in any matter actionable under Subchapter E,  
17 Chapter 17, Business & Commerce Code, after deducting amounts  
18 allocated to or retained by the attorney general as authorized by  
19 law, unless:

20 (A) [~~(1)~~] another law requires that the penalty  
21 be credited to a different fund or account; or

22 (B) [~~(2)~~] the judgment awarding the penalty  
23 requires that the penalty be paid to another named recipient; or

24 (2) civil restitution recovered by the attorney

1 general in an action brought by the attorney general arising from  
2 conduct that violates a consumer protection, public health, or  
3 general welfare law, if, on the hearing of an ex parte motion filed  
4 by the attorney general after the entry of a judgment awarding civil  
5 restitution, the court:

6 (A) determines that, based on the facts and  
7 circumstances of the case:

8 (i) it is impossible or impracticable to  
9 identify injured parties;

10 (ii) it is impossible or impracticable to  
11 determine the degree to which each claimant was injured and  
12 entitled to recover;

13 (iii) the cost of administering a claim  
14 procedure will disproportionately reduce the amount of restitution  
15 available for the payment of individual claims; or

16 (iv) the claims of all identifiable persons  
17 eligible to receive restitution have been paid without exhausting  
18 the funds available for restitution; and

19 (B) enters a judgment or order that the  
20 restitution be credited to the judicial fund for programs approved  
21 by the supreme court that provide basic civil legal services to the  
22 indigent.

23 (c) If a court enters a judgment or order that restitution  
24 be credited to the judicial fund, the attorney general shall notify  
25 the Legislative Budget Board and shall distribute that restitution  
26 in accordance with the court judgment or order.

27 (d) The total amount credited to the judicial fund for

1 programs approved by the supreme court that provide basic civil  
2 legal services to the indigent under Subsection (b) may not exceed  
3 \$50 [~~\$10~~] million per state fiscal biennium.

4 (e) The provisions of this section do not limit the common  
5 law authority or other statutory authority of the attorney general  
6 to seek and obtain cy pres distribution from a court.

7 SECTION 2. The change in law made by this Act applies only  
8 to a civil penalty or civil restitution that is received by the  
9 attorney general on or after the effective date of this Act.

10 SECTION 3. This Act takes effect immediately if it receives  
11 a vote of two-thirds of all the members elected to each house, as  
12 provided by Section 39, Article III, Texas Constitution. If this  
13 Act does not receive the vote necessary for immediate effect, this  
14 Act takes effect September 1, 2013.

ADOPTED

MAY 15 2013

*Henry Cisneros*  
Secretary of State

By: Robert Owen

H.B. No. 1445

Substitute the following for H.B. No. 1445:

By: Owen

C.S.     .B. No.     

A BILL TO BE ENTITLED

AN ACT

relating to the distribution of certain civil penalties and  
civil restitution received by the attorney general.

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

SECTION 1. This Act shall be known as the Chief Justice  
Jack Pope Act.

SECTION 2. Section 402.007, Government Code, is amended to  
read as follows:

Sec. 402.007. PAYMENT TO TREASURY; ALLOCATION OF CERTAIN  
MONEY RECEIVED BY ATTORNEY GENERAL [~~PENALTIES~~]. (a) The  
attorney general shall immediately pay into the state treasury  
money received for a debt, a [~~or~~] penalty, or restitution.

(b) Subject to Subsection (d) [~~(e)~~], the comptroller shall  
credit to the judicial fund for programs approved by the supreme  
court that provide basic civil legal services to the indigent  
the net amount of:

(1) a civil penalty that is recovered in an action by  
the attorney general in any matter actionable under Subchapter  
E, Chapter 17, Business & Commerce Code, after deducting amounts  
allocated to or retained by the attorney general as authorized  
by law, unless:

(A) [~~(1)~~] another law requires that the penalty  
be credited to a different fund or account; or

(B) [~~(2)~~] the judgment awarding the penalty

1 requires that the penalty be paid to another named recipient;  
2 and

3 (2) civil restitution recovered by the attorney  
4 general in an action brought by the attorney general arising  
5 from conduct that violates a consumer protection, public health,  
6 or general welfare law, if, on the hearing of an ex parte motion  
7 filed by the attorney general after the entry of a judgment  
8 awarding civil restitution, the court:

9 (A) determines that, based on the facts and  
10 circumstances of the case:

11 (i) it is impossible or impracticable to  
12 identify injured parties;

13 (ii) it is impossible or impracticable to  
14 determine the degree to which each claimant was injured and  
15 entitled to recover;

16 (iii) the cost of administering a claim  
17 procedure will disproportionately reduce the amount of  
18 restitution available for the payment of individual claims; or

19 (iv) the claims of all identifiable persons  
20 eligible to receive restitution have been paid without  
21 exhausting the funds available for restitution; and

22 (B) enters a judgment or order that the  
23 restitution be credited to the judicial fund for programs  
24 approved by the supreme court that provide basic civil legal  
25 services to the indigent.

26 (c) If a court enters a judgment or order that restitution  
27 be credited to the judicial fund, the attorney general shall

1 notify the Legislative Budget Board and shall distribute that  
2 restitution in accordance with the court judgment or order.

3 (d) The total amount credited to the judicial fund for  
4 programs approved by the supreme court that provide basic civil  
5 legal services to the indigent under Subsection (b) may not  
6 exceed \$50 [~~\$10~~] million per state fiscal biennium.

7 (e) The provisions of this section do not limit the common  
8 law authority or other statutory authority of the attorney  
9 general to seek and obtain cy pres distribution from a court.

10 SECTION 3. The change in law made by this Act applies only  
11 to a civil penalty or civil restitution that is received by the  
12 attorney general on or after the effective date of this Act.

13 SECTION 4. This Act takes effect immediately if it  
14 receives a vote of two-thirds of all the members elected to each  
15 house, as provided by Section 39, Article III, Texas  
16 Constitution. If this Act does not receive the vote necessary  
17 for immediate effect, this Act takes effect September 1, 2013.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 15, 2013**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1445** by Thompson, Senfronia (Relating to the distribution of certain civil penalties and civil restitution received by the attorney general.), **As Passed 2nd House**

<p><b>While the fiscal implication of certain elements of the bill are indeterminate, no significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Government Code to provide that certain funds recovered by the Office of the Attorney General (OAG) as civil penalties and restitution pursuant to provisions of the Business and Commerce Code and credited to the Judicial Fund No. 573 to provide basic civil legal services for the indigent may not exceed \$50 million for the state fiscal biennium. Current statute does not allow deposits to the Judicial Fund from this revenue source to exceed \$10 million per state fiscal biennium.

Civil penalties currently collected by the Office of the Attorney General under existing law are revenue sources to General Revenue, General Revenue-Dedicated Account No. 273 Federal Health and Health Lab Funding Excess Revenue, General Revenue-Dedicated Account No. 5137 Regional Trauma, and Judicial Fund No. 573. The bill contains language stating that civil penalties collected by the OAG cannot be deposited to Judicial Fund No. 573 if another law requires that the penalty be credited to a different fund or account. Accordingly, this estimate assumes there would be no change to the distribution of revenues from civil penalties existing statute directs to the above funds and accounts.

The bill provides that a court may order civil restitution recovered by the OAG in a consumer protection, public health, or general welfare proceeding be credited to Judicial Fund No. 573 if the court finds that: 1) it is impossible or impracticable to identify injured parties; 2) it is impossible or impracticable to determine the degree to which the claimants were injured and entitled to recover; or 3) the cost of administering the claim procedure will disproportionately reduce the amount of restitution available for the payment of individual claims; or 4) the claims of all identifiable persons eligible to receive restitution have been paid without exhausting the funds available for the payment of restitution. In summary, any restitution funds or penalties collected in a settlement that for various reasons cannot be disbursed to defendants would be credited to Judicial Fund No. 573. The OAG has not identified any cases that would significantly affect the amount of civil penalties or civil restitution that would be received by the state. Accordingly, no significant fiscal impact to the state is anticipated if this legislation is enacted.

Finally, the bill also requires that the OAG notify the Legislative Budget Board if a court enters a judgement or order that restitution be credited to Judicial Fund No. 573.

The Office of the Attorney General has indicated any additional work resulting from the bill could be absorbed within existing resources. The Comptroller of Public Accounts has indicated the fiscal impact on the state cannot be estimated.

The bill would take effect immediately if it receives a two-thirds vote in each house. Otherwise, the bill would take effect September 1, 2013.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts

**LBB Staff:** UP, SD, CL, JP, AG, ZS



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 3, 2013**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1445** by Thompson, Senfronia (Relating to the distribution of certain civil penalties and civil restitution received by the attorney general.), **Committee Report 2nd House, Substituted**

<p><b>While the fiscal implication of certain elements of the bill are indeterminate, no significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Government Code to provide that certain funds recovered by the Office of the Attorney General (OAG) as civil penalties and restitution pursuant to provisions of the Business and Commerce Code and credited to the Judicial Fund No. 573 to provide basic civil legal services for the indigent may not exceed \$50 million for the state fiscal biennium. Current statute does not allow deposits to the Judicial Fund from this revenue source to exceed \$10 million per state fiscal biennium.

Civil penalties currently collected by the Office of the Attorney General under existing law are revenue sources to General Revenue, General Revenue-Dedicated Account No. 273 Federal Health and Health Lab Funding Excess Revenue, General Revenue-Dedicated Account No. 5137 Regional Trauma, and Judicial Fund No. 573. The bill contains language stating that civil penalties collected by the OAG cannot be deposited to Judicial Fund No. 573 if another law requires that the penalty be credited to a different fund or account. Accordingly, this estimate assumes there would be no change to the distribution of revenues from civil penalties existing statute directs to the above funds and accounts.

The bill provides that a court may order civil restitution recovered by the OAG in a consumer protection, public health, or general welfare proceeding be credited to Judicial Fund No. 573 if the court finds that: 1) it is impossible or impracticable to identify injured parties; 2) it is impossible or impracticable to determine the degree to which the claimants were injured and entitled to recover; or 3) the cost of administering the claim procedure will disproportionately reduce the amount of restitution available for the payment of individual claims; or 4) the claims of all identifiable persons eligible to receive restitution have been paid without exhausting the funds available for the payment of restitution. In summary, any restitution funds or penalties collected in a settlement that for various reasons cannot be disbursed to defendants would be credited to Judicial Fund No. 573. The OAG has not identified any cases that would significantly affect the amount of civil penalties or civil restitution that would be received by the state. Accordingly, no significant fiscal impact to the state is anticipated if this legislation is enacted.

Finally, the bill also requires that the OAG notify the Legislative Budget Board if a court enters a judgement or order that restitution be credited to Judicial Fund No. 573.

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fiscal impact on the state cannot be estimated.

The bill would take effect immediately if it receives a two-thirds vote in each house. Otherwise, the bill would take effect September 1, 2013.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts

**LBB Staff:** UP, CL, JP, AG, ZS

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**April 30, 2013**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1445** by Thompson, Senfronia (Relating to the distribution of certain civil penalties and civil restitution received by the attorney general.), **As Engrossed**

**While the fiscal implication of certain elements of the bill are indeterminate, no significant fiscal implication to the State is anticipated.**

The bill would amend the Government Code to provide that certain funds recovered by the Office of the Attorney General (OAG) as civil penalties and restitution pursuant to provisions of the Business and Commerce Code and credited to the Judicial Fund No. 573 to provide basic civil legal services for the indigent may not exceed \$50 million for the state fiscal biennium. Current statute does not allow deposits to the Judicial Fund from this revenue source to exceed \$10 million per state fiscal biennium.

Civil penalties currently collected by the Office of the Attorney General under existing law are revenue sources to General Revenue, General Revenue-Dedicated Account No. 273 Federal Health and Health Lab Funding Excess Revenue, General Revenue-Dedicated Account No. 5137 Regional Trauma, and Judicial Fund No. 573. The bill contains language stating that civil penalties collected by the OAG cannot be deposited to Judicial Fund No. 573 if another law requires that the penalty be credited to a different fund or account. Accordingly, this estimate assumes there would be no change to the distribution of revenues from civil penalties existing statute directs to the above funds and accounts.

The bill provides that a court may order civil restitution recovered by the OAG in a consumer protection, public health, or general welfare proceeding be credited to Judicial Fund No. 573 if the court finds that: 1) it is impossible or impracticable to identify injured parties; 2) it is impossible or impracticable to determine the degree to which the claimants were injured and entitled to recover; or 3) the cost of administering the claim is prohibitive due to the low probability of recovery for each claimant. In summary, any restitution funds or penalties collected in a settlement that for various reasons cannot be disbursed to defendants would be credited to Judicial Fund No. 573. The OAG has not identified any cases that would significantly affect the amount of civil penalties or civil restitution that would be received by the state. Accordingly, no significant fiscal impact to the state is anticipated if this legislation is enacted.

Finally, the bill also requires that the OAG notify the Legislative Budget Board and the court if the court orders that restitution be distributed in a manner that differs from the bill's provisions.

The Office of the Attorney General has indicated any additional work resulting from the bill could be absorbed within existing resources. The Comptroller of Public Accounts has indicated the fiscal impact on the state cannot be estimated.

The bill would take effect immediately if it receives a two-thirds vote in each house. Otherwise,

the bill would take effect September 1, 2013.

**Local Government Impact**

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**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts

**LBB Staff:** UP, CL, ZS, JP, AG

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**March 27, 2013**

**TO:** Honorable Tryon D. Lewis, Chair, House Committee on Judiciary & Civil Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1445** by Thompson, Senfronia (Relating to the distribution of certain civil penalties and civil restitution received by the attorney general.), **Committee Report 1st House, Substituted**

**While the fiscal implication of certain elements of the bill are indeterminate, no significant fiscal implication to the State is anticipated.**

The bill would amend the Government Code to provide that certain funds recovered by the Office of the Attorney General (OAG) as civil penalties and restitution pursuant to provisions of the Business and Commerce Code and credited to the Judicial Fund No. 573 to provide basic civil legal services for the indigent may not exceed \$50 million for the state fiscal biennium. Current statute does not allow deposits to the Judicial Fund from this revenue source to exceed \$10 million per state fiscal biennium.

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**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts

**LBB Staff:** UP, CL, ZS, JP, AG

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**March 18, 2013**

**TO:** Honorable Tryon D. Lewis, Chair, House Committee On Judiciary & Civil Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1445** by Thompson, Senfronia (Relating to the distribution of certain civil penalties and civil restitution received by the attorney general.), **As Introduced**

<p><b>While the fiscal implication of certain elements of the bill are indeterminate, no significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Government Code to provide that certain funds recovered by the Office of the Attorney General (OAG) as civil penalties and restitution pursuant to provisions of the Business and Commerce Code and credited to the Judicial Fund No. 573 to provide basic civil legal services for the indigent may not exceed \$50 million for the state fiscal biennium. Current statute does not allow deposits to the Judicial Fund from this revenue source to exceed \$10 million per state fiscal biennium.

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