

ASSEMBLY BILL

No. 2685

Introduced by Assembly Member Cooley

February 21, 2014

An act to amend Section 13963 of the Government Code, to amend Section 1191.15 of the Penal Code, and to amend Sections 216 and 9202 of the Probate Code, relating to crime victims.

LEGISLATIVE COUNSEL'S DIGEST

AB 2685, as introduced, Cooley. Crime Victim Compensation and Government Claims Board.

(1) Existing law provides for the compensation of victims and derivative victims of specified types of crimes by the California Victim Compensation and Government Claims Board from the Restitution Fund, a continuously appropriated fund, for specified losses suffered as a result of those crimes. Existing law requires the board to be subrogated against the perpetrator of the crime to the rights of a recipient to the extent of any compensation granted. Existing law authorizes a court to allow a victim, or others related to the victim, as specified, to submit a statement to the court concerning the crime, the person responsible, and the need for restitution.

This bill would allow a representative of the board to provide the probation department, district attorney, and court with information relevant to the board's losses prior to the imposition of a sentence, as provided.

(2) Existing law requires that when a deceased person has an heir who is confined in a correctional facility, the estate attorney or other specified person give the director of the board notice of the decedent's death within 90 days of the death and include specified information

about the incarcerated heir. Existing law requires the general personal representative or the estate attorney of a decedent’s estate to provide notices of the decedent’s death to the director of the board, no later than 90 days after the date letters of administration are first issued if the representative or attorney knows or has reason to believe that an heir is incarcerated in a prison, jail, or other specified state or local correctional facility.

This bill would expand these provisions to apply to a beneficiary, as well as an heir. This bill would prohibit a distribution from being made from the estate to the heir or beneficiary until after a restitution claim placed by the board has been satisfied.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13963 of the Government Code is
 2 amended to read:
 3 13963. (a) The board shall be subrogated to the rights of the
 4 recipient to the extent of any compensation granted by the board.
 5 The subrogation rights shall be against the perpetrator of the crime
 6 or any person liable for the losses suffered as a direct result of the
 7 crime which was the basis for receipt of compensation, including
 8 an insurer held liable in accordance with the provision of a policy
 9 of insurance issued pursuant to Section 11580.2 of the Insurance
 10 Code.
 11 (b) The board shall also be entitled to a lien on any judgment,
 12 award, or settlement in favor of or on behalf of the recipient for
 13 losses suffered as a direct result of the crime that was the basis for
 14 receipt of compensation in the amount of the compensation granted
 15 by the board. The board may recover this amount in a separate
 16 action, or may intervene in an action brought by or on behalf of
 17 the recipient. If a claim is filed within one year of the date of
 18 recovery, the board shall pay 25 percent of the amount of the
 19 recovery that is subject to a lien on the judgment, award, or
 20 settlement, to the recipient responsible for recovery thereof from
 21 the perpetrator of the crime, provided that the total amount of the
 22 lien is recovered. The remaining 75 percent of the amount, and
 23 any amount not claimed within one year pursuant to this section,
 24 shall be deposited in the Restitution Fund.

1 (c) The board may compromise or settle and release any lien
2 pursuant to this chapter if it is found that the action is in the best
3 interest of the state or the collection would cause undue hardship
4 upon the recipient. Repayment obligations to the Restitution Fund
5 shall be enforceable as a summary judgment.

6 (d) No judgment, award, or settlement in any action or claim
7 by a recipient, where the board has an interest, shall be satisfied
8 without first giving the board notice and a reasonable opportunity
9 to perfect and satisfy the lien. The notice shall be given to the
10 board in Sacramento except in cases where the board specifies that
11 the notice shall be given otherwise. The notice shall include the
12 complete terms of the award, settlement, or judgment, and the
13 name and address of any insurer directly or indirectly providing
14 for the satisfaction.

15 (e) (1) If the recipient brings an action or asserts a claim for
16 damages against the person or persons liable for the injury or death
17 giving rise to an award by the board under this chapter, notice of
18 the institution of legal proceedings, notice of all hearings,
19 conferences, and proceedings, and notice of settlement shall be
20 given to the board in Sacramento except in cases where the board
21 specifies that notice shall be given to the Attorney General. Notice
22 of the institution of legal proceedings shall be given to the board
23 within 30 days of filing the action. All notices shall be given by
24 the attorney employed to bring the action for damages or by the
25 recipient if no attorney is employed.

26 (2) Notice shall include all of the following:

27 (A) Names of all parties to the claim or action.

28 (B) The address of all parties to the claim or action except for
29 those persons represented by attorneys and in that case the name
30 of the party and the name and address of the attorney.

31 (C) The nature of the claim asserted or action brought.

32 (D) In the case of actions before courts or administrative
33 agencies, the full title of the case including the identity of the court
34 or agency, the names of the parties, and the case or docket number.

35 (3) When the recipient or his or her attorney has reason to
36 believe that a person from whom damages are sought is receiving
37 a defense provided in whole or in part by an insurer, or is insured
38 for the injury caused to the recipient, notice shall include a
39 statement of that fact and the name and address of the insurer.
40 Upon request of the board, a person obligated to provide notice

1 shall provide the board with a copy of the current written claim or
2 complaint.

3 (f) The board shall pay the county probation department or other
4 county agency responsible for collection of funds owed to the
5 Restitution Fund under Section 13967, as operative on or before
6 September 28, 1994, Section 1202.4 of the Penal Code, Section
7 1203.04 of the Penal Code, as operative on or before August 2,
8 1995, or Section 730.6 of the Welfare and Institutions Code, 10
9 percent of the funds so owed and collected by the county agency
10 and deposited in the Restitution Fund. This payment shall be made
11 only when the funds are deposited in the Restitution Fund within
12 45 days of the end of the month in which the funds are collected.
13 Receiving 10 percent of the moneys collected as being owed to
14 the Restitution Fund shall be considered an incentive for collection
15 efforts and shall be used for furthering these collection efforts.
16 The 10-percent rebates shall be used to augment the budgets for
17 the county agencies responsible for collection of funds owed to
18 the Restitution Fund, as provided in Section 13967, as operative
19 on or before September 28, 1994, Section 1202.4 of the Penal
20 Code, Section 1203.04 of the Penal Code, operative on or before
21 August 2, 1995, or Section 730.6 of the Welfare and Institutions
22 Code. The 10-percent rebates shall not be used to supplant county
23 funding.

24 (g) In the event of judgment or award in a suit or claim against
25 a third party or insurer, if the action or claim is prosecuted by the
26 recipient alone, the court or agency shall first order paid from any
27 judgment or award the reasonable litigation expenses incurred in
28 preparation and prosecution of the action or claim, together with
29 reasonable attorney’s fees when an attorney has been retained.
30 After payment of the expenses and attorney’s fees, the court or
31 agency shall, on the application of the board, allow as a lien against
32 the amount of the judgment or award, the amount of the
33 compensation granted by the board to the recipient for losses
34 sustained as a result of the same incident upon which the
35 settlement, award, or judgment is based.

36 (h) For purposes of this section, “recipient” means any person
37 who has received compensation or will be provided compensation
38 pursuant to this chapter, including the victim’s guardian,
39 conservator or other personal representative, estate, and survivors.

1 (i) A representative of the board may provide the probation
2 department, district attorney, and court with information relevant
3 to the board's losses prior to the imposition of a sentence.

4 SEC. 2. Section 1191.15 of the Penal Code is amended to read:

5 1191.15. (a) The court may permit the victim of any crime,
6 ~~or~~ his or her parent or guardian if the victim is a minor, ~~or~~ the next
7 of kin of the victim if the victim has died, *or a representative of*
8 *the California Victim Compensation and Government Claims*
9 *Board when enforcing its subrogation rights*, to file with the court
10 a written, audiotaped, or videotaped statement, or statement stored
11 on a CD Rom, DVD, or any other recording medium acceptable
12 to the court, expressing his or her views concerning the crime, the
13 person responsible, and the need for restitution, in lieu of or in
14 addition to the person personally appearing at the time of judgment
15 and sentence. The court shall consider the statement filed with the
16 court prior to imposing judgment and sentence.

17 Whenever an audio or video statement or statement stored on a
18 CD Rom, DVD, or other medium is filed with the court, a written
19 transcript of the statement shall also be provided by the person
20 filing the statement, and shall be made available as a public record
21 of the court after the judgment and sentence have been imposed.

22 (b) Whenever a written, audio, or video statement or statement
23 stored on a CD Rom, DVD, or other medium is filed with the court,
24 it shall remain sealed until the time set for imposition of judgment
25 and sentence except that the court, the probation officer, and
26 counsel for the parties may view and listen to the statement not
27 more than two court days prior to the date set for imposition of
28 judgment and sentence.

29 (c) No person may, and no court shall, permit any person to
30 duplicate, copy, or reproduce by any audio or visual means any
31 statement submitted to the court under the provisions of this
32 section.

33 (d) Nothing in this section shall be construed to prohibit the
34 prosecutor from representing to the court the views of the victim
35 ~~or~~, his or her parent or guardian ~~or~~, the next of kin, *or the*
36 *California Victim Compensation and Government Claims Board*.

37 (e) In the event the court permits an audio or video statement
38 or statement stored on a CD Rom, DVD, or other medium to be
39 filed, the court shall not be responsible for providing any equipment
40 or resources needed to assist the victim in preparing the statement.

1 SEC. 3. Section 216 of the Probate Code is amended to read:

2 216. When a deceased person has an heir *or beneficiary* who
3 is *or has ever been* confined in a prison or facility under the
4 jurisdiction of the Department of Corrections and Rehabilitation,
5 or its Division of Juvenile Facilities, or confined in any county or
6 city jail, road camp, industrial farm, or other local correctional
7 facility, the estate attorney, or if there is no estate attorney, the
8 beneficiary, the personal representative, or the person in possession
9 of property of the decedent shall give the Director of the California
10 Victim Compensation and Government Claims Board notice of
11 the decedent's death not later than 90 days after the date of death.
12 The notice shall be given as provided in Section 1215 and shall
13 include all of the following:

14 (a) The name, date of birth, ~~and~~ location of incarceration, *and*
15 *current address if no longer incarcerated*, of the decedent's heir
16 *or beneficiary*.

17 (b) The heir's *or beneficiary's* CDCR number if incarcerated
18 *or previously incarcerated* in a Department of Corrections and
19 Rehabilitation facility or booking number if incarcerated *or*
20 *previously incarcerated* in a county facility.

21 (c) A copy of the decedent's death certificate.

22 (d) The probate case number, and the name of the superior court
23 hearing the case.

24 SEC. 4. Section 9202 of the Probate Code is amended to read:

25 9202. (a) Not later than 90 days after the date letters are first
26 issued to a general personal representative, the general personal
27 representative or estate attorney shall give the Director of Health
28 Care Services notice of the decedent's death in the manner provided
29 in Section 215 if the general personal representative knows or has
30 reason to believe that the decedent received health care under
31 Chapter 7 (commencing with Section 14000) or Chapter 8
32 (commencing with Section 14200) of Part 3 of Division 9 of the
33 Welfare and Institutions Code, or was the surviving spouse of a
34 person who received that health care. The director has four months
35 after notice is given in which to file a claim.

36 (b) Not later than 90 days after the date letters are first issued
37 to a general personal representative, the general personal
38 representative or estate attorney shall give the Director of the
39 California Victim Compensation and Government Claims Board
40 notice of the decedent's death in the manner provided in Section

1 216 if the general personal representative or estate attorney knows
2 or has reason to believe that an heir *or beneficiary* is *or has ever*
3 *been* confined in a prison or facility under the jurisdiction of the
4 Department of Corrections and Rehabilitation or confined in any
5 county or city jail, road camp, industrial farm, or other local
6 correctional facility. The director of the board shall have four
7 months after that notice is received in which to pursue collection
8 of any outstanding restitution fines or orders. *A distribution shall*
9 *not be made from the estate to the heir or beneficiary until after*
10 *a restitution claim placed by the board has been satisfied.*

11 (c) (1) Not later than 90 days after the date letters are first issued
12 to a general personal representative, the general personal
13 representative or estate attorney shall give the Franchise Tax Board
14 notice of the administration of the estate. The notice shall be given
15 as provided in Section 1215.

16 (2) The provisions of this subdivision shall apply to estates for
17 which letters are first issued on or after July 1, 2008.