HB180

196857-1

By Representatives Robertson, Estes, Stringer, Simpson, Reynolds, Polizos and Ball

RFD: Judiciary

First Read: 19-MAR-19
SYNOPSIS: Under existing law, individuals who are convicted of a felony may owe compensation to the victim of the crime under certain conditions.

Existing law also provides that when an individual who is indicted for or convicted of a felony in this state is paid or, by contract, is owed payment for the reenactment of the commission of the felony, by way of a movie, book, magazine division, or for the expression of the individual's thoughts, memoirs, or opinions regarding the commission of the felony, the money shall be deposited into an escrow account for the benefit of the victims of the crime.

This bill would repeal the existing law and would establish a procedure for collecting funds, other than child support and other exempt income, and property paid to a person convicted of a specified crime.

This bill would require a person who pays or contracts to pay an individual convicted of a
specified crime to provide notice to the Board of Adjustment of the payment or intended payment and require the board to provide notice of the payment to all known crime victims.

The bill would authorize a crime victim or the Attorney General or Board of Adjustment, on behalf of the crime victim, to apply for civil compensation and other remedies relating to the crime.

This bill would authorize the Board of Adjustment to impose civil penalties for failure of a payor to report funds and property paid to an individual convicted of a specified crime and would establish a procedure for providing notice and hearing to the payor.

A BILL TO BE ENTITLED
AN ACT

Relating to crime victims' compensation; to repeal Division 2 (commencing with Section 41-9-80) and to add Division 2A (commencing with Section 41-9-80.1) to Article 4 of Chapter 9 of the Code of Alabama 1975; to establish Lisa’s Law; to provide a procedure for collecting certain funds and property paid to or intended to be paid to an individual convicted of certain crimes; to provide notice requirements to
the payor of the funds or property; to authorize certain crime
victims or the Board of Adjustment or the Attorney General on
behalf of the crime victims, to apply for civil compensation
and other civil remedies arising from the commission of the
crime; and to authorize the Board of Adjustment to issue civil
penalties for violations.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Division 2 (commencing with Section
41-9-80) of Article 4 of Chapter 9 of Title 41 of the Code of
Alabama 1975, is repealed.

Section 2. Division 2A (commencing with Section
41-9-80.1) is added to Article 4 of Chapter 9 of Title 41 of
the Code of Alabama 1975, to read as follows:

Division 2A. Victims of Crimes.
§41-9-80.1.
This division shall be known and may be cited as
Lisa's Law.
§41-9-80.2.
As used in this division, the following terms shall
have the following meanings:
(1) BOARD. The Board of Adjustment.
(2) CONVICTED INDIVIDUAL. An individual convicted of
a specified crime or a representative of the individual.
(3) EARNED INCOME. Income derived from an
individual's own labor or active participation in a business.
The term does not include income from dividends or
(4) FUNDS OF A CONVICTED INDIVIDUAL. Funds and property received from any source by a convicted individual. The term includes funds that a superintendent, sheriff, municipal official, or other correctional official receives on behalf of a convicted individual and deposits into the individual's inmate or prisoner account to the credit of the individual. The term does not include funds from child support payments and earned income.

(5) PERSON. An individual, corporation, estate, partnership, association, or other legal entity, or representative of such. The term does not include the state, a political subdivision of the state, or an individual who is a superintendent, sheriff, municipal official, or other correctional official required to give notice by this division.

(6) PROFITS FROM A CRIME. Any of the following:
   a. Property or income of a convicted individual that the individual obtained or generated from the commission of the crime of which the individual was convicted.
   b. Property or income that a convicted individual obtained or generated from the sale, conversion, or exchange of proceeds of a specified crime of which the individual was convicted.
   c. Property or income generated as a result of having committed a specified crime of which a convicted individual was convicted, including through the use of unique knowledge obtained during the commission of, or in preparation
for, the commission of a specified crime, as well as any
property or income obtained or generated from the sale,
conversion, or exchange of the property.

d. Property obtained by or income generated from the
reenactment of a specified crime, by way of a movie, book,
magazine, radio, or television presentation, live
entertainment, or from any other written or verbal expression
of the individual's thoughts, feelings, opinions, or emotions
regarding the crime.

(7) REPRESENTATIVE. A person who represents or
stands in the place of another person, including, but not
limited to, an agent, assignee, attorney, guardian, committee,
conservator, partner, receiver, administrator, executor or
heir of another person, or parent of a minor.

(8) SPECIFIED CRIME. A felony offense involving
moral turpitude, as described in Section 17-3-30.1, where the
victim was a resident of this state at the time of the offense
or the act or acts constituting the offense occurred in whole
or in part of this state.

(9) VICTIM OF A CRIME. Any of the following:

a. A victim of a specified crime.

b. If the victim of a specified crime is deceased:
   1. The surviving spouse of the victim.
   2. If there is no surviving spouse, the next
   surviving person or surviving group of people in the order of
   intestate succession as listed in Section 43-8-42.

§41-9-80.3.
(a) A person that knowingly contracts for, pays for, or agrees to pay to a convicted individual profits from the that crime or to the representative of the individual, shall give written notice to the board of the payment or obligation to pay as soon as practicable after discovering that the payment or intended payment constitutes profits from a crime or funds of a convicted individual.

(b)(1) A superintendent, sheriff, municipal official, or other correctional officer shall also give written notice to the board of any payment or obligation to pay subject to the notice requirements of subsection (a) if he or she receives or will receive funds, the combined or aggregate value of which exceeds five thousand dollars ($5,000), on behalf of a convicted individual who is serving a sentence with the Alabama Department of Corrections or is otherwise confined at a local correctional facility and deposits or will deposit the funds into an inmate or prisoner account to the credit of the individual.

(2) Whenever the state or a political subdivision of the state makes a payment or has an obligation to pay funds of a convicted individual and the value, combined value, or aggregate value of the funds exceeds or will exceed five thousand dollars ($5,000), the state or political subdivision of the state shall also give written notice to the board.

(3) In all other instances where the payment or obligation to pay involves funds of a convicted individual and the value, combined value, or aggregate value of the funds
exceeds or will exceed five thousand dollars ($5,000), the
convicted individual who receives or will receive the funds,
or the representative of the individual, shall give written
notice to the board.

(c) The board shall notify all known victims of the
crime of the convicted individual of the existence of the
profits or funds at each victim's last known address upon
receipt of either of the following:

(1) Notice of a contract, an agreement to pay, or
payment of profits from a crime or funds of a convicted
individual pursuant to subsection (a) or (b).

(2) Notice of the payment of funds of a convicted
individual from the superintendent, sheriff, municipal
official or other correctional official of the facility where
the individual is confined.

§41-9-80.4.

(a) Notwithstanding any other provision of law to
the contrary, a victim of a crime may bring a civil action in
a court of competent jurisdiction to recover restitution or
money damages, or both, from the convicted individual who
committed the crime or the individual's representative.

(b) Notwithstanding any other provision of law to
the contrary, a judgment obtained pursuant to this section is
not subject to execution or enforcement against the first one
thousand dollars ($1,000) deposited into an inmate or prisoner
account to the credit of an inmate.
(c) An action pursuant to subsection (a) must be filed within five years of the actual discovery of the profits or funds or within five years of actual notice received from or published by the board of the discovery of the profits or funds, whichever is later.

§41-9-80.5.

(a) Upon filing an action pursuant to subsection (a) of Section 41-9-80.4, the victim of a crime shall give notice to the board of the filing by delivering a copy of the summons and complaint to the board.

(b) Prior to filing an action under Section 41-9-80.4, the victim of a crime may give notice to the board. Upon receipt of the notice, the board may apply for any appropriate provisional remedy that is otherwise authorized to be invoked prior to the commencement of an action.

§41-9-80.6.

(a) Upon receipt of a copy of a summons and complaint or upon receipt of notice from a victim of a crime prior to the filing of an action as provided in subsection (b) of 41-9-80.5, the board shall immediately do all of the following:

(1) Notify all other known victims of a crime of the convicted individual of the alleged existence of profits from the crime or funds of the crime of the convicted individual by certified mail, return receipt requested.

(2) Publish a legal notice in newspapers of general circulation in the county where the crime was committed and in
counties contiguous to the county. The notice shall be published once every six months for five years from the date the board is initially notified by the victim. The notice shall advise any victims of the crime of the existence of profits from the crime or funds of the convicted individual.

(b) The board may provide for any additional notice as the board deems necessary.

(c) The costs of publication for any notice issued under this section shall be paid for from the profits from the crime or funds of the convicted individual.

§41-9-80.7.

(a) The Attorney General or the board, acting on behalf of a victim of a crime, may apply for any and all provisional remedies that are also otherwise available to the victim.

(b) The provisional remedies of attachment, injunction, receivership, and notice of pendency available to the victim of the crime under existing law and the Alabama Rules of Civil Procedure shall also be available to the Attorney General or the board in all actions under this division.

(c) Upon the filing of a motion for a provisional remedy, the moving party shall state whether any other provisional remedy has previously been sought in the same action against the same defendant. The court may require the moving party to elect between those remedies to which it would otherwise be entitled.
§41-9-80.8.

(a) If a person knowingly and willfully fails to give notice in violation of Section 41-9-80.3, the board, after notice and hearing pursuant to the Alabama Administrative Procedure Act, shall impose an assessment of up to the amount of the payment or obligation to pay and a civil penalty of up to one thousand dollars ($1,000) or ten percent of the payment or obligation to pay, whichever is greater.

(b)(1) If a person fails to pay the assessment and civil penalty imposed by subsection (a), the assessment and civil penalty may be recovered from the person by an action brought by the Attorney General, upon the request of the board, in any court of competent jurisdiction. The board shall deposit the assessment in an escrow account pending the expiration of the five-year statute of limitations contained in Section 41-9-80.4 to preserve the funds to satisfy a civil judgment in favor of an individual who is a victim of a crime committed by the convicted individual to whom the failure to give notice relates.

(2) The board shall notify any victim of a crime committed by the convicted individual to whom the failure to give notice relates of the existence of the funds. The notice shall instruct the victim of the crime that he or she may have a right to commence a civil action against the convicted individual, as well as any other information deemed necessary by the board.
(3) a. Upon presentation to the board of a civil judgment for restitution or money damages incurred as a result of the crime, the board shall satisfy up to 100 percent of the judgment by a victim of a crime by the convicted individual to whom the failure to give notice under this subsection relates, including costs and disbursements as taxed by the clerk of the court, from the escrowed fund obtained pursuant to this subsection, but the amount of all judgments, costs, and disbursements satisfied from the escrowed funds may not exceed the amount in escrow.

b. If more than one victim of a crime indicates to the board that they intend to commence or have commenced a civil action against the convicted individual, the board shall delay satisfying any judgment, costs, or disbursements until the claims of all such victims of the crime are reduced to judgment.

c. If the aggregate of all judgments, costs, and disbursement obtained exceeds the amount of escrowed funds, the amount shall be reduced to a pro rata share to partially satisfy each judgment.

(4) After expiration of the five-year statute of limitations period established in Section 41-9-80.4, the board shall review all judgments that have been satisfied from the escrowed funds. In the event no claim was filed or judgment obtained prior to the expiration of the five-year statute of limitations, the board shall return the escrowed amount to the convicted individual. In the event a claim or claims are
pending at the expiration of the statute of limitations, the funds shall remain escrowed until the final determination of all of the claims to allow the board to satisfy any judgment which may be obtained by the victim.

(5) Notwithstanding any provision of law to the contrary, an alleged failure by a convicted individual to give notice under Section 41-9-80.3 may not result in proceedings for an alleged violation of the conditions of probation, parole, conditional release, post release supervision, or supervised release, unless all of the following occur:

a. A victim of a crime makes one or more claims pursuant to this division.

b. The board imposes an assessment or penalty, or both, against the convicted individual pursuant to this division.

c. The convicted individual fails to pay the total amount of the assessment or penalty within 60 days of the imposition of the assessment or penalty.

(6) Records maintained by the board and proceedings by the board regarding a claim submitted by a victim of a crime are confidential.

Section 3. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming law.