

1-1 By: Ellis, Lucio, Van de Putte S.B. No. 440  
1-2 (In the Senate - Filed February 9, 2005; February 15, 2005,  
1-3 read first time and referred to Committee on Criminal Justice;  
1-4 April 20, 2005, reported favorably by the following vote: Yeas 4,  
1-5 Nays 0; April 20, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to compensation for wrongful imprisonment.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 103.002, Civil Practice and Remedies  
1-11 Code, is amended to read as follows:

1-12 Sec. 103.002. CHOICE OF COMPENSATION METHOD; DOUBLE  
1-13 RECOVERY PROHIBITED. (a) A person entitled to compensation under  
1-14 Section 103.001 may proceed by following the provisions for  
1-15 administratively awarded compensation under Subchapter B, ~~[or]~~  
1-16 filing suit under Subchapter C, or by proceeding ~~[but a person may~~  
1-17 ~~not seek compensation]~~ under both Subchapters B and C.

1-18 (b) The court shall reduce the amount of compensation that a  
1-19 person is awarded under Subchapter C by the amount of any  
1-20 compensation that, before the date of the court award, was paid or  
1-21 was scheduled to be paid to the person under Subchapter B for the  
1-22 same wrongful imprisonment.

1-23 (c) The comptroller shall reduce the amount of compensation  
1-24 that a person is awarded under Subchapter B by the amount of any  
1-25 compensation that, before the date of the administrative award, was  
1-26 paid or was scheduled to be paid to the person as a result of an  
1-27 award or settlement in a suit filed under Subchapter C for the same  
1-28 wrongful imprisonment.

1-29 (d) If under Subsection (b) or (c) the amount of the  
1-30 reduction is equal to or greater than the amount of the compensation  
1-31 being reduced, the court or the comptroller, as applicable, may not  
1-32 award additional compensation.

1-33 SECTION 2. Section 103.003, Civil Practice and Remedies  
1-34 Code, is amended to read as follows:

1-35 Sec. 103.003. LIMITATION ON TIME TO FILE. (a) Not later  
1-36 than the third anniversary of the date the person received the  
1-37 pardon or was found not guilty as required by Section 103.001, a  
1-38 person seeking compensation under this chapter must:

1-39 (1) file an application with the comptroller for  
1-40 compensation under Subchapter B; or

1-41 (2) file suit against the state for compensation under  
1-42 Subchapter C.

1-43 (b) The filing of an application for compensation under  
1-44 Subchapter B tolls the limitation period that is provided by  
1-45 Subsection (a)(2) and that is applicable to a suit filed under  
1-46 Subchapter C by the same person for the same wrongful imprisonment  
1-47 until the date the comptroller makes a determination under Section  
1-48 103.051(c).

1-49 SECTION 3. Section 103.052, Civil Practice and Remedies  
1-50 Code, is amended by amending Subsection (a) and adding Subsection  
1-51 (a-1) to read as follows:

1-52 (a) Except as provided by Subsection (a-1), a [A] person who  
1-53 meets the requirements of Section 103.001 is entitled to  
1-54 compensation in an amount equal to \$50,000 [+

1-55 [-(1) \$25,000] multiplied by the number of years served  
1-56 in prison, expressed as a fraction to reflect partial years~~[, if the~~  
1-57 ~~time served is less than 20 years; or~~

1-58 [-(2) \$500,000 if the time served is 20 years or more].

1-59 (a-1) A person sentenced to death who meets the requirements  
1-60 of Section 103.001 is entitled to compensation in an amount equal to  
1-61 \$100,000 multiplied by the number of years served in prison,  
1-62 expressed as a fraction to reflect partial years.

1-63 SECTION 4. Subsection (b), Section 103.153, Civil Practice  
1-64 and Remedies Code, is amended to read as follows:

2-1 (b) Except as provided by Section 103.002, a [A] person who  
2-2 receives compensation under this chapter may not bring any action  
2-3 involving the same subject matter, including an action involving  
2-4 the person's arrest, conviction, or length of confinement, against  
2-5 any governmental unit or an employee of any governmental unit.

2-6 SECTION 5. Subsection (c), Section 103.105, Civil Practice  
2-7 and Remedies Code, is repealed.

2-8 SECTION 6. (a) The change in law made by this Act to  
2-9 Section 103.052, Civil Practice and Remedies Code, applies to an  
2-10 administrative proceeding for compensation for wrongful  
2-11 imprisonment for which the application is filed on or after the  
2-12 effective date of this Act. An application filed before the  
2-13 effective date of this Act is governed by the law in effect on the  
2-14 date of the filing, and that law is continued in effect for that  
2-15 purpose.

2-16 (b) The change in law made by this Act to Section 103.105,  
2-17 Civil Practice and Remedies Code, applies to an action:

2-18 (1) commenced on or after the effective date of this  
2-19 Act; or

2-20 (2) pending on that effective date and in which the  
2-21 trial, or any new trial or retrial following motion, appeal, or  
2-22 otherwise, begins on or after that effective date.

2-23 (c) In an action commenced before the effective date of this  
2-24 Act, a trial, new trial, or retrial that is in progress on the  
2-25 effective date is governed by the law applicable to the trial, new  
2-26 trial, or retrial immediately before the effective date, and that  
2-27 law is continued in effect for that purpose.

2-28 SECTION 7. The changes in law made by this Act to Sections  
2-29 103.002 and 103.003, Civil Practice and Remedies Code, apply  
2-30 without regard to whether a person has filed an application under  
2-31 Subchapter B, Chapter 103, Civil Practice and Remedies Code, or has  
2-32 commenced an action under Subchapter C, Chapter 103, Civil Practice  
2-33 and Remedies Code, before the effective date of this Act.

2-34 SECTION 8. This Act takes effect immediately if it receives  
2-35 a vote of two-thirds of all the members elected to each house, as  
2-36 provided by Section 39, Article III, Texas Constitution. If this  
2-37 Act does not receive the vote necessary for immediate effect, this  
2-38 Act takes effect September 1, 2005.

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