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H.B. No. 1736

A BILL TO BE ENTITLED

AN ACT

relating to compensation of persons wrongfully imprisoned.

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

SECTION 1. This Act shall be known as the Tim Cole Act.

SECTION 2. Section 103.001, Civil Practice and Remedies Code, is amended by adding Subsection (c) to read as follows:

(c) If a deceased person would be entitled to compensation under Subsection (a)(2) if living, including a person who received a posthumous pardon, the person's heirs, legal representatives, and estate are entitled to lump-sum compensation under Section 103.052.

SECTION 3. Section 103.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 103.003. LIMITATION ON TIME TO FILE. Not later than the third anniversary of the date the person on whose imprisonment the claim is based received the pardon or was granted relief [~~found not guilty~~] as required by Section 103.001, a person seeking compensation under this chapter must [+]

~~[(1)]~~ file an application with the comptroller for compensation under Subchapter B [~~, or~~

~~[(2) file suit against the state for compensation under Subchapter C].~~

SECTION 4. Section 103.051(a), Civil Practice and Remedies Code, as amended by Chapters 1190 (H.B. 814) and 1388 (S.B. 1719), Acts of the 80th Legislature, Regular Session, 2007, is reenacted

1 and amended to read as follows:

2 (a) To apply for compensation under this subchapter, the
3 claimant must file with the comptroller's judiciary section:

4 (1) an application for compensation provided for that
5 purpose by the comptroller;

6 (2) a verified copy of the pardon or court order
7 justifying the application for compensation; ~~and~~

8 (3) a statement provided by the Texas Department of
9 Criminal Justice and any county or municipality that incarcerated
10 the person on whose imprisonment the claim is based in connection
11 with the relevant sentence verifying the length of incarceration;

12 (4) if applicable, a statement from the Department of
13 Public Safety verifying registration as a sex offender and length
14 of registration;

15 (5) if applicable, a statement from the Texas
16 Department of Criminal Justice verifying the length of time spent
17 on parole; and

18 (6) if the claimant is applying for compensation under
19 Section 103.052(a)(2), a certified copy of each child support order
20 under which child support payments became due during the time the
21 claimant served in prison and copies of the official child support
22 payment records described by Section 234.009, Family Code, for that
23 period.

24 SECTION 5. Section 103.052, Civil Practice and Remedies
25 Code, is amended to read as follows:

26 Sec. 103.052. LUMP-SUM AND CERTAIN OTHER ~~[AMOUNT AND TIMING~~
27 ~~OF]~~ COMPENSATION. (a) A person who meets the requirements of

1 Section 103.001 is entitled to compensation in an amount equal to:

2 (1) \$80,000 [~~\$50,000~~] multiplied by the number of
3 years served in prison, expressed as a fraction to reflect partial
4 years; and

5 (2) compensation for child support payments owed by
6 the person on whose imprisonment the claim is based that became due
7 and interest on child support arrearages that accrued during the
8 time served in prison but were not paid.

9 [~~(a-1) Notwithstanding Subsection (a)(1), a person~~
10 ~~sentenced to death who meets the requirements of Section 103.001 is~~
11 ~~entitled to compensation in an amount equal to \$100,000 multiplied~~
12 ~~by the number of years served in prison, expressed as a fraction to~~
13 ~~reflect partial years.]~~

14 (b) A person who, after serving a sentence in a Texas prison
15 for which the person is entitled to compensation under Subsection
16 (a)(1), was released on parole or required to register as a sex
17 offender under Chapter 62, Code of Criminal Procedure, is entitled
18 to compensation in an amount equal to \$25,000 multiplied by the
19 number of years served either on parole or as a registered sex
20 offender, expressed as a fraction to reflect partial years [~~A~~
21 ~~person who is owed an amount of compensation under Subsection~~
22 ~~(a)(1) or (a-1) equal to or greater than \$50,000 shall be paid that~~
23 ~~compensation in two equal annual installments].~~

24 (c) On application by the claimant in a manner prescribed by
25 the board of trustees of the Employees Retirement System of Texas, a
26 claimant who is entitled to compensation under Section 103.001(a)
27 may participate in the group benefits program under Chapter 1551,

1 Insurance Code, and is automatically covered by the basic coverage
2 for annuitants provided under that chapter. A claimant who
3 participates in the group benefits program is entitled to receive
4 state contributions for the full cost of the premiums. [~~If~~
5 ~~requested by the claimant, the Texas Department of Mental Health~~
6 ~~and Mental Retardation shall provide appropriate counseling for one~~
7 ~~year to the claimant at a mutually agreed-on location at no charge~~
8 ~~to the claimant.]~~

9 (d) The amount of compensation under Subsection (a)(2) to
10 which a person is entitled shall be paid on the person's behalf in a
11 lump-sum payment to the state disbursement unit, as defined by
12 Section 101.0302, Family Code, for distribution to the obligee
13 under the child support order.

14 (e) If requested by the claimant, up to 120 hours of tuition
15 at a career center, community college, or state university shall be
16 paid on behalf of the claimant.

17 SECTION 6. Subchapter B, Chapter 103, Civil Practice and
18 Remedies Code, is amended by adding Section 103.053 to read as
19 follows:

20 Sec. 103.053. ANNUITY COMPENSATION. (a) A person entitled
21 to compensation under Section 103.001(a) is entitled to annuity
22 payments, based on a present value sum equal to the amount to which
23 the person is entitled under Sections 103.052(a)(1) and (b).

24 (b) The annuity payments under this section are payable in
25 equal monthly installments for the life of the claimant and must be
26 based on a five percent per annum interest rate and other actuarial
27 factors within the discretion of the comptroller.

1 (c) The annuity payments may not be accelerated, deferred,
2 increased, or decreased. The applicant may not sell, mortgage or
3 otherwise encumber, or anticipate the payments, wholly or partly,
4 by assignment or otherwise.

5 SECTION 7. Section 103.151, Civil Practice and Remedies
6 Code, is amended to read as follows:

7 Sec. 103.151. ADMINISTRATIVE PAYMENT OF COMPENSATION. (a)
8 The comptroller shall make the compensation [~~first installment~~
9 ~~payment~~] due a claimant under Section 103.052 [~~an applicant~~] and
10 the lump-sum payment, if any, to be paid to the state disbursement
11 unit, as defined by Section 101.0302, Family Code, under Subchapter
12 B, to the extent that funds are available and appropriated for that
13 purpose, not later than the 30th day after the date the comptroller
14 grants the application. A claim for lump-sum compensation payable
15 under Section 103.052(a) or (b) shall survive the death of the
16 claimant in favor of the heirs, legal representatives, and estate
17 of the claimant.

18 (b) The comptroller shall begin making annuity payments to a
19 claimant under Section 103.053(a) on the first anniversary of the
20 date of payment of the compensation due under Section 103.052 [~~pay~~
21 ~~the amount of the second installment payment on the first~~
22 ~~anniversary of the date of the first installment)].~~

23 (c) If appropriated funds are insufficient to pay the amount
24 due a claimant [~~an applicant~~] and the amount to be paid to the state
25 disbursement unit, as defined by Section 101.0302, Family Code,
26 money shall be paid under the procedure described by Section
27 103.152.

1 SECTION 8. Section 103.152(a), Civil Practice and Remedies
2 Code, is amended to read as follows:

3 (a) Not later than November 1 of each even-numbered year,
4 the comptroller shall provide a list of claimants entitled to
5 payment under Subchapter B [~~or C~~] and the amounts due for each
6 claimant to the governor, the lieutenant governor, and the chair of
7 the appropriate committee in each house of the legislature so that
8 the legislature may appropriate the amount needed to pay the amount
9 owed to each claimant and the amount to be paid to the state
10 disbursement unit, as defined by Section 101.0302, Family Code, on
11 the claimant's behalf.

12 SECTION 9. Section 103.154(b), Civil Practice and Remedies
13 Code, is amended to read as follows:

14 (b) Annuity [~~Except as provided by Subsection (c),~~
15 ~~compensation~~] payments to a person under Section 103.151(b) [~~this~~
16 ~~chapter~~] terminate on the date of the person's death. Any payments
17 scheduled to be paid after that date are credited to the state and
18 may not be paid to any other person, including the person's
19 surviving spouse, heirs, devisees, or beneficiaries under the
20 person's will, or to the person's estate.

21 SECTION 10. The following provisions of the Civil Practice
22 and Remedies Code are repealed:

- 23 (1) Section 103.002;
- 24 (2) Subchapter C, Chapter 103; and
- 25 (3) Section 103.152(c).

26 SECTION 11. (a) The change in law made by this Act applies
27 only to an application for compensation for wrongful imprisonment

1 that is filed on or after the effective date of this Act. An
2 application filed or action commenced under Chapter 103, Civil
3 Practice and Remedies Code, before the effective date of this Act is
4 governed by the law in effect immediately before the effective date
5 of this Act, and that law is continued in effect for that purpose.

6 (b) Notwithstanding Section 103.003, Civil Practice and
7 Remedies Code, as amended by this Act, a person who received
8 compensation under Chapter 103, Civil Practice and Remedies Code,
9 before September 1, 2009, is entitled to annuity payments under
10 Section 103.053, Civil Practice and Remedies Code, as added by this
11 Act, based on a present value sum equal to the amount the person
12 would receive under Sections 103.052(a)(1) and (b), Civil Practice
13 and Remedies Code, as amended by this Act, if the person were to
14 receive compensation under those sections on September 1, 2009.
15 The comptroller of public accounts shall begin making payments to a
16 claimant under this section not later than the 30th day after the
17 date the comptroller determines the claimant is eligible to receive
18 compensation under this section.

19 SECTION 12. This Act takes effect September 1, 2009.