

## **BILL ANALYSIS**

C.S.H.B. 417  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Recent legislation increased the lump-sum compensation for a wrongfully convicted person and addressed lump-sum compensation for a person wrongfully punished as a sex offender. In the wake of this landmark legislation, there have been numerous reports of attorneys who charge excessive fees or fees in violation of the Texas Bar Association's code of professional conduct in exchange for counsel and assistance in completing a request to the comptroller of public accounts for wrongful imprisonment compensation. The request for wrongful imprisonment compensation form does not require the assistance of counsel, and a variety of nonprofit organizations provide assistance in filing claims with the state at no cost. C.S.H.B. 417 addresses these issues.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 417 amends the Civil Practice and Remedies Code to require the Texas Department of Criminal Justice to provide to each wrongfully imprisoned person information, both orally and in writing, that includes guidance on how to obtain compensation for wrongful imprisonment and a list of and contact information for nonprofit advocacy groups, identified by the department, that assist wrongfully imprisoned persons in filing claims for compensation for wrongful imprisonment. The bill requires the department to provide such information at the time of the release of the wrongfully imprisoned person from a penal institution or, if the person is not confined in a penal institution, as soon as is practicable after the date of the full pardon or granting of relief on the basis of innocence or actual innocence, respectively. The bill defines "department" and provides for the meaning of "penal institution" by reference to the Code of Criminal Procedure and for the meaning of "wrongfully imprisoned person" by reference to the Government Code. The bill accounts for contingencies based on the passage or not of the Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in existing codes by setting out provisions that are substantially the same as those described above but referencing the Government Code provision that would be applicable if that bill is not enacted.

C.S.H.B. 417 extends the deadline by which a claimant denied compensation for wrongful imprisonment by the comptroller of public accounts is required to submit an application to cure any problem identified by the comptroller as a reason for the denial from not later than the 10th day after the date the denial is received to not later than the 30th day after the date the denial is received.

C.S.H.B. 417 prohibits a person, including an attorney, from charging or collecting a fee at a rate that exceeds the maximum established rate for preparing, filing, or curing a claimant's application for compensation for wrongful imprisonment. The bill authorizes an attorney to

enter into a fee agreement with a claimant for services related to such an application only after the attorney has disclosed in writing to the claimant the maximum established rate for fees. The bill prohibits an attorney from charging or collecting a fee for preparing, filing, or curing a claimant's application before a final determination is made by the comptroller that the claimant is eligible or ineligible for compensation for wrongful imprisonment. The bill sets the maximum rate for services related to preparing, filing, or curing an application for compensation for wrongful imprisonment at \$250 per hour.

C.S.H.B. 417 requires a person seeking payment for preparing, filing, or curing such an application to file, together with the application or not later than the 14th day after the date the application or cured application is filed, a fee report with the comptroller's judiciary section. The bill requires a fee report to include the total dollar amount sought for fees; the number of hours the person worked preparing, filing, or curing the application; a brief description of work done during those hours; and, if the preparer is an attorney, a sworn copy of the attorney's fee agreement, signed by the attorney and claimant. The bill requires an attorney who charges or collects a fee for preparing, filing, or curing an application in an amount that exceeds the maximum established rate for those services to be referred to the Office of Chief Disciplinary Counsel for the State Bar of Texas. The bill makes its provisions relating to attorney's fees applicable only to an attorney's fee agreement entered into on or after January 1, 2012.

C.S.H.B. 417 amends Section 501.091, Government Code, as added by Chapter 180 (H.B. 1736), Acts of the 81st Legislature, Regular Session, 2009, to make a conforming change.

#### **EFFECTIVE DATE**

September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 417 contains a provision not included in the original extending the deadline by which a claimant is required to file a cured application after receiving a denial for compensation for wrongful imprisonment. The substitute differs from the original by setting the maximum rate for services relating to preparing, filing, or curing an application for compensation for wrongful imprisonment at \$250 per hour, whereas the original requires the comptroller of public accounts, by rule, to establish a maximum hourly rate for an attorney's services related to preparing or filing an application or bringing a mandamus action relating to such compensation. The substitute omits provisions included in the original relating to the requirements for the comptroller in setting those rates.

C.S.H.B. 417 differs from the original by prohibiting a person, including an attorney, from charging or collecting a fee at a rate that exceeds the maximum established rate for preparing, filing, or curing an application, whereas the original prohibits an attorney from charging or collecting a fee at a rate that exceeds the maximum established rate for preparing, filing, or bringing an application or mandamus action. The substitute, in its provision authorizing an attorney to enter into a fee agreement with a claimant for certain services, makes that authorization applicable to services related to an application for wrongful imprisonment compensation, whereas the original makes the authorization applicable to services related to such an application or a mandamus action. The substitute, in its provision prohibiting an attorney from charging a fee for certain services before a final determination is made that the claimant is eligible or ineligible for compensation, differs from the original by specifying that such a determination is made by the comptroller, whereas the original specifies that the determination is made by the comptroller or the court, as applicable. The substitute makes that prohibition applicable to an attorney preparing, filing, or curing an application, rather than to an attorney preparing, filing, or bringing an application or mandamus action, as in the original.

C.S.H.B. 417 differs from the original by requiring a person seeking payment for preparing,

filing, or curing an application to file a fee report, whereas the original requires an attorney seeking payment for preparing or filing an application to file a fee report. The substitute omits a provision included in the original setting a deadline by which an attorney seeking payment for bringing a mandamus action relating to wrongful imprisonment compensation is required to file a fee report. The substitute, in the provision listing the information required in the fee report, differs from the original by requiring the fee report to include the number of hours worked preparing, filing, or curing the application, whereas the original requires the report to include the number of hours preparing, filing, or arguing the application or mandamus action. The substitute, in the same provision listing the information required in the fee report, differs from the original by requiring the fee report to include a sworn copy of the attorney's fee agreement only if the preparer is an attorney, the total dollar amount sought for fees, and the number of hours the person worked, whereas the original does not specify that the attorney's fee agreement is prepared by an attorney, but specifies that the total dollar amount of the fees are attorney's fees, and that the hours worked are applicable to an attorney. The substitute differs from the original by requiring an attorney who charges or collects a fee for certain services relating to an application for wrongful imprisonment compensation in an amount that exceeds the maximum established rate to be referred to the Office of Chief Disciplinary Counsel for the State Bar of Texas, whereas the original specifies that such a person violates a rule of the Texas Disciplinary Rules of Professional Conduct prohibiting illegal or unconscionable fees.

C.S.H.B. 417 contains provisions not included in the original accounting for contingencies based on the passage or not of the Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in existing codes in bill provisions requiring notice by the Texas Department of Criminal Justice to a wrongfully imprisoned person. The substitute differs from the original by making conforming and nonsubstantive changes not included in the original.