

## **BILL ANALYSIS**

Senate Research Center  
82R27938 CAE-D

C.S.H.B. 417  
By: Anchia et al. (Ellis)  
State Affairs  
5/13/2011  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

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 amends current law relating to claims for compensation for wrongful imprisonment.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Subchapter A, Chapter 103, Civil Practice and Remedies Code, to read as follows:

#### SUBCHAPTER A. ELIGIBILITY; NOTICE OF ELIGIBILITY

SECTION 2. Amends Section 103.001(a), Civil Practice and Remedies Code, as follows:

(a) Entitles a person to compensation if:

(1) the person has served in whole or in part a sentence in prison under the laws of this state; and

(2) the person:

(A) has received a full pardon on the basis of innocence for the crime for which the person was sentenced;

(B) has been granted relief on the basis of actual innocence of the crime for which the person was sentenced; or

(C) has been granted relief in accordance with a writ of habeas corpus and the state district court in which the charge against the person was pending has entered an order dismissing the charge, and the district court's dismissal order is based on a motion to dismiss in which the state's attorney states that no credible evidence exists that inculpatates the defendant and, either in the motion or in an affidavit, the state's attorney states that the state's attorney believes that the defendant is actually innocent of the crime for which the person was sentenced.

SECTION 3. Amends Subchapter A, Chapter 103, Civil Practice and Remedies Code, by adding Section 103.002, as follows:

Sec. 103.002. NOTICE TO WRONGFULLY IMPRISONED PERSON. (a) Defines, in this section, "department," "penal institution," and "wrongfully imprisoned person."

(b) Requires the Texas Department of Criminal Justice (TDCJ) to provide to each wrongfully imprisoned person information, both orally and in writing, that includes:

(1) guidance on how to obtain compensation under this chapter; and

(2) a list of and contact information for nonprofit advocacy groups, identified by TDCJ, that assist wrongfully imprisoned persons in filing claims for compensation under this chapter.

(c) Requires TDCJ to provide the information required under Subsection (b):

(1) at the time of the release of the wrongfully imprisoned person from a penal institution; or

(2) as soon as practicable after TDCJ has reason to believe that the person is entitled to compensation under Section 103.001(a).

SECTION 4. Amends Section 103.003, Civil Practice and Remedies Code, as follows:

Sec. 103.003. LIMITATION ON TIME TO FILE. Requires a person seeking compensation under this chapter to file an application with the comptroller of public accounts (comptroller) for compensation under Subchapter B not later than the third anniversary of the date:

(1) the person on whose imprisonment the claim is based received a pardon as provided in Section 103.001(a)(2)(A);

(2) the person was granted relief as provided by Section 103.001(a)(2)(B); or

(3) an order of dismissal described by Section 103.001(a)(2)(C) was signed.

Deletes existing text requiring a person seeking compensation under this chapter, not later than the third anniversary of the date the person on whose imprisonment the claim is based received the pardon was granted relief as required by Section 103.001, to file an application with the comptroller for compensation under Subchapter B.

SECTION 5. Amends Section 103.051(a), (b-1), and (d), Civil Practice and Remedies Code, as follows:

(a) Requires a claimant, to apply for compensation under this subchapter, to file with the comptroller's judiciary section:

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

(2) a verified copy of the pardon, court order, motion to dismiss, and affidavit, as applicable, justifying the application for compensation;

(3) a statement provided by TDCJ and any county or municipality that incarcerated the person on whose imprisonment the claim is based in connection with the relevant sentence verifying the length of incarceration;

(4) if applicable, a statement from the Department of Public Safety of the State of Texas (DPS) verifying registration as a sex offender and length of registration;

(5) if applicable, a statement from TDCJ verifying the length of time spent on parole; and

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

(b-1) Requires the comptroller, in determining the eligibility of a claimant, to consider only the verified copies of documents filed under Subsection (a)(2), rather than consider only the verified copy of the pardon or court order filed by the claimant under Subsection (a). Requires the comptroller, if the filed documents do not clearly indicate on their face that person is entitled to compensation under Section 103.001(a)(2), to deny the claim. Provides that the comptroller's duty to determine the eligibility of a claimant under this section is purely ministerial. Deletes existing text requiring the comptroller, if the pardon or court order does not clearly indicate on its face that the pardon or the court order was granted or rendered on the basis of the claimant's actual innocence of the crime for which the claimant was sentenced, to deny the claim.

(d) Requires the comptroller of, if the comptroller denies the claim, to state the reason for the denial. Requires the claimant, not later than the 30th day, rather than 10th day, after the date the denial is received, to submit an application to cure any problem identified. Requires the comptroller, not later than the 45th day after the date an application is received under this subsection, to determine the claimant's eligibility and the amount owed.

SECTION 6. Amends Section 103.054, Civil Practice and Remedies Code, as follows:

Sec. 103.054. PAYMENT OF CERTAIN TUITION AND FEES. Requires tuition for up to 120 credit hours, including tuition charged under Section 54.0513 (Designated Tuition), Education Code, or any other law granting an educational institution discretion to set the tuition rate, and any mandatory fees associated with attendance at the institution, charged by a career center or public institution of higher education to be paid on behalf of the claimant, if requested by the claimant before the seventh anniversary of the relevant date described by Section 103.003, rather than before the seventh anniversary of the date the claimant receives the pardon or was granted relief as required by Section 103.001.

SECTION 7. Amends Chapter 103, Civil Practice and Remedies Code, by adding Subchapter C, as follows:

#### SUBCHAPTER C. FEES

Sec. 103.101. FEES LIMITED; PREREQUISITES TO FEE AGREEMENT. (a) Prohibits a person, including an attorney, from charging or collecting a fee for preparing, filing, or curing a claimant's application under Section 103.051 (Application Procedure) unless the fee is based on a reasonable hourly rate.

(b) Authorizes an attorney to enter into a fee agreement with a claimant for services related to an application under Section 103.051 only after the attorney has disclosed in writing to the claimant the hourly rate that will be charged for the services.

(c) Prohibits an attorney from charging or collecting a fee for preparing, filing, or curing a claimant's application under Section 103.051 before a final determination

is made by the comptroller that the claimant is eligible or ineligible for compensation under this chapter.

Sec. 103.102. SUBMISSION OF FEE REPORT. (a) Requires a person seeking payment for preparing, filing, or curing the application, together with an application for compensation under this chapter or not later than the 14th day after the date the application or cured application is filed, to file a fee report with the comptroller's judiciary section.

(b) Requires that a fee report under this section include:

- (1) the total dollar amount sought for fees;
- (2) the number of hours the person worked preparing, filing, or curing the application; and
- (3) the name of the applicant.

(c) Provides that a fee report under this section is public information subject to Chapter 552 (Public Information), Government Code.

SECTION 8. Amends Section 501.091, Government Code, as added by Chapter 1389 (S.B. 1847), Acts of the 81st Legislature, Regular Session, 2009, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Defines, in this section, "wrongfully imprisoned person."

(d) Requires TDCJ to provide information to wrongfully imprisoned persons as required by Section 103.002, Civil Practice and Remedies Code.

SECTION 9. Repealer: Section 501.091 (Definitions), Government Code, as added by Chapter 180 (H.B. 1736), Acts of the 81st Legislature, Regular Session, 2009

SECTION 10. Makes application of Subchapter C, Chapter 103, Civil Practice and Remedies Code, as added by this Act, prospective to January 1, 2012.

SECTION 11. Provides that Section 103.001(a)(2)(C), Civil Practice and Remedies Code, as added by this Act, applies to a person who has received an order of dismissal signed on or after September 1, 2009.

SECTION 12. Effective date: upon passage or September 1, 2011.