

1 AN ACT

2 relating to claims for compensation for wrongful imprisonment and
3 group health benefits coverage for persons wrongfully imprisoned.

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

5 SECTION 1. The heading to Subchapter A, Chapter 103, Civil
6 Practice and Remedies Code, is amended to read as follows:

7 SUBCHAPTER A. ELIGIBILITY; NOTICE OF ELIGIBILITY [~~AND CHOICE OF~~
8 ~~COMPENSATION METHOD~~]

9 SECTION 2. Section 103.001, Civil Practice and Remedies
10 Code, is amended by amending Subsection (a) and adding Subsections
11 (d) and (e) to read as follows:

12 (a) A person is entitled to compensation if:

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

15 (2) the person:

16 (A) has received a full pardon on the basis of
17 innocence for the crime for which the person was sentenced; [~~or~~]

18 (B) has been granted relief in accordance with a
19 writ of habeas corpus that is based on a court finding or
20 determination that the person is actually innocent of the crime for
21 which the person was sentenced; or

22 (C) has been granted relief in accordance with a
23 writ of habeas corpus and:

24 (i) the state district court in which the

1 charge against the person was pending has entered an order
2 dismissing the charge; and

3 (ii) the district court's dismissal order
4 is based on a motion to dismiss in which the state's attorney states
5 that no credible evidence exists that inculcates the defendant and,
6 either in the motion or in an affidavit, the state's attorney states
7 that the state's attorney believes that the defendant is actually
8 innocent of the crime for which the person was sentenced [~~on the~~
9 ~~basis of actual innocence of the crime for which the person was~~
10 ~~sentenced~~].

11 (d) Subject to this section, a person entitled to
12 compensation under Subsection (a) is also eligible to obtain group
13 health benefit plan coverage through the Texas Department of
14 Criminal Justice as if the person were an employee of the
15 department. This subsection does not entitle the person's spouse
16 or other dependent or family member to group health benefit plan
17 coverage. Coverage may be obtained under this subsection for a
18 period of time equal to the total period the claimant served for the
19 crime for which the claimant was wrongfully imprisoned, including
20 any period during which the claimant was released on parole or to
21 mandatory supervision or required to register under Chapter 62,
22 Code of Criminal Procedure. A person who elects to obtain coverage
23 under this subsection shall pay a monthly contribution equal to the
24 total amount of the monthly contributions for that coverage for an
25 employee of the department.

26 (e) Notwithstanding Section 103.053(c), annuity payments
27 may be reduced by an amount necessary to make the payments required

1 by Subsection (d), and that amount shall be transferred to an
2 appropriate account as provided by the comptroller by rule to fund
3 that coverage.

4 SECTION 3. Subchapter A, Chapter 103, Civil Practice and
5 Remedies Code, is amended by adding Section 103.002 to read as
6 follows:

7 Sec. 103.002. NOTICE TO WRONGFULLY IMPRISONED PERSON. (a)

8 In this section:

9 (1) "Department" means the Texas Department of
10 Criminal Justice.

11 (2) "Penal institution" has the meaning assigned by
12 Article 62.001, Code of Criminal Procedure.

13 (3) "Wrongfully imprisoned person" has the meaning
14 assigned by Section 501.091, Government Code, as added by Chapter
15 1389 (S.B. 1847), Acts of the 81st Legislature, Regular Session,
16 2009.

17 (b) The department shall provide to each wrongfully
18 imprisoned person information, both orally and in writing, that
19 includes:

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

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

26 (c) The department must provide the information required
27 under Subsection (b):

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

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

6 SECTION 4. Section 103.003, Civil Practice and Remedies
7 Code, is amended to read as follows:

8 Sec. 103.003. LIMITATION ON TIME TO FILE. A person seeking
9 compensation under this chapter must file an application with the
10 comptroller for compensation under Subchapter B not ~~[Not]~~ later
11 than the third anniversary of the date:

12 (1) the person on whose imprisonment the claim is
13 based received a ~~[the]~~ pardon as provided by Section
14 103.001(a)(2)(A);

15 (2) the person's application for a writ of habeas
16 corpus was granted as provided by Section 103.001(a)(2)(B); or

17 (3) an order of dismissal described by Section
18 103.001(a)(2)(C) was signed ~~[was granted relief as required by~~
19 ~~Section 103.001, a person seeking compensation under this chapter~~
20 ~~must file an application with the comptroller for compensation~~
21 ~~under Subchapter B].~~

22 SECTION 5. Section 103.051, Civil Practice and Remedies
23 Code, is amended by amending Subsections (a), (b-1), and (d) and
24 adding Subsection (f) to read as follows:

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

27 (1) an application for compensation provided for that

1 purpose by the comptroller;

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

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

9 (4) if applicable, a statement from the Department of
10 Public Safety verifying registration as a sex offender and length
11 of registration;

12 (5) if applicable, a statement from the Texas
13 Department of Criminal Justice verifying the length of time spent
14 on parole; and

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

21 (b-1) In determining the eligibility of a claimant, the
22 comptroller shall consider only the verified copies of documents
23 ~~[copy of the pardon or court order]~~ filed ~~[by the claimant]~~ under
24 Subsection (a)(2) ~~[(a)]~~. If the filed documents do ~~[pardon or~~
25 ~~court order does]~~ not clearly indicate on their ~~[its]~~ face that the
26 person is entitled to compensation under Section 103.001(a)(2)
27 ~~[pardon or the court order was granted or rendered on the basis of~~

1 ~~the claimant's actual innocence of the crime for which the claimant~~
2 ~~was sentenced],~~ the comptroller shall deny the claim. The
3 comptroller's duty to determine the eligibility of a claimant under
4 this section is purely ministerial.

5 (d) If the comptroller denies the claim, the comptroller
6 must state the reason for the denial. Not later than the 30th
7 ~~10th~~ day after the date the denial is received, the claimant must
8 submit an application to cure any problem identified. Not later
9 than the 45th day after the date an application is received under
10 this subsection, the comptroller shall determine the claimant's
11 eligibility and the amount owed.

12 (f) To apply for coverage through the Texas Department of
13 Criminal Justice under Section 103.001(d), the claimant must file
14 with the department:

15 (1) an application for coverage provided for that
16 purpose by the department; and

17 (2) a statement by the comptroller that the
18 comptroller has determined the claimant to be eligible for
19 compensation under this subchapter.

20 SECTION 6. Section 103.054, Civil Practice and Remedies
21 Code, is amended to read as follows:

22 Sec. 103.054. PAYMENT OF CERTAIN TUITION AND FEES. If
23 requested by the claimant before the seventh anniversary of the
24 relevant date described by Section 103.003 ~~[the claimant received~~
25 ~~the pardon or was granted relief as required by Section 103.001],~~
26 tuition for up to 120 credit hours, including tuition charged under
27 Section 54.0513, Education Code, or any other law granting an

1 educational institution discretion to set the tuition rate, and any
2 mandatory fees associated with attendance at the institution,
3 charged by a career center or public institution of higher
4 education shall be paid on behalf of the claimant.

5 SECTION 7. Chapter 103, Civil Practice and Remedies Code,
6 is amended by adding Subchapter C to read as follows:

7 SUBCHAPTER C. FEES

8 Sec. 103.101. FEES LIMITED; PREREQUISITES TO FEE AGREEMENT.

9 (a) A person, including an attorney, may not charge or collect a
10 fee for preparing, filing, or curing a claimant's application under
11 Section 103.051 unless the fee is based on a reasonable hourly rate.

12 (b) An attorney may enter into a fee agreement with a
13 claimant for services related to an application under Section
14 103.051 only after the attorney has disclosed in writing to the
15 claimant the hourly rate that will be charged for the services.

16 (c) An attorney may not collect a fee for preparing, filing,
17 or curing a claimant's application under Section 103.051 before a
18 final determination is made by the comptroller that the claimant is
19 eligible or ineligible for compensation under this chapter.

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

26 (b) A fee report under this section must include:

27 (1) the total dollar amount sought for fees;

1 (2) the number of hours the person worked preparing,
2 filing, or curing the application; and

3 (3) the name of the applicant.

4 (c) A fee report under this section is public information
5 subject to Chapter 552, Government Code.

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

10 (a) In this section, "wrongfully imprisoned person" means a
11 person who:

12 (1) has served in whole or in part a sentence in a
13 facility operated by or under contract with the department; and

14 (2) has:

15 (A) received a pardon for innocence for the crime
16 for which the person was sentenced; [~~or~~]

17 (B) been granted relief in accordance with a writ
18 of habeas corpus that is based on a court finding or determination
19 that the person is actually innocent of the crime for which the
20 person was sentenced; or

21 (C) been granted relief in accordance with a writ
22 of habeas corpus and:

23 (i) the state district court in which the
24 charge against the person was pending has entered an order
25 dismissing the charge; and

26 (ii) the district court's dismissal order
27 is based on a motion to dismiss in which the state's attorney states

1 that no credible evidence exists that inculpates the defendant and,
2 either in the motion or in an affidavit, the state's attorney states
3 that the state's attorney believes that the defendant is actually
4 innocent of the crime for which the person was sentenced [~~otherwise~~
5 ~~been granted relief on the basis of actual innocence of the crime~~
6 ~~for which the person was sentenced~~].

7 (d) The department shall provide information to wrongfully
8 imprisoned persons as required by Section 103.002, Civil Practice
9 and Remedies Code.

10 SECTION 9. Subchapter C, Chapter 1551, Insurance Code, is
11 amended by adding Section 1551.115 to read as follows:

12 Sec. 1551.115. PARTICIPATION BY WRONGFULLY IMPRISONED
13 PERSONS. Subject to Section 103.001, Civil Practice and Remedies
14 Code, a person who is entitled to compensation under Chapter 103,
15 Civil Practice and Remedies Code, is eligible to obtain health
16 benefit plan coverage under the group benefits program in the
17 manner and to the extent that an employee of the Texas Department of
18 Criminal Justice would be entitled to coverage, except that this
19 section does not entitle the person's spouse or other dependent or
20 family member to coverage.

21 SECTION 10. Section 501.091(a), Government Code, as added
22 by Chapter 180 (H.B. 1736), Acts of the 81st Legislature, Regular
23 Session, 2009, is repealed.

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

27 SECTION 12. Sections 103.001(d) and (e) and 103.051(f),

1 Civil Practice and Remedies Code, and Section 1551.115, Insurance
2 Code, as added by this Act, apply to a person the comptroller of
3 public accounts has determined to be eligible for compensation as
4 provided by Section 103.051(b), Civil Practice and Remedies Code,
5 on or after September 1, 2011.

6 SECTION 13. Subchapter C, Chapter 103, Civil Practice and
7 Remedies Code, as added by this Act, applies only to an attorney's
8 fee agreement entered into on or after January 1, 2012. An
9 attorney's fee agreement entered into before January 1, 2012, is
10 governed by the law as it existed immediately before the effective
11 date of this Act, and that law is continued in effect for that
12 purpose.

13 SECTION 14. This Act takes effect immediately if it
14 receives a vote of two-thirds of all the members elected to each
15 house, as provided by Section 39, Article III, Texas Constitution.
16 If this Act does not receive the vote necessary for immediate
17 effect, this Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 417 was passed by the House on April 26, 2011, by the following vote: Yeas 146, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 417 on May 21, 2011, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 417 was passed by the Senate, with amendments, on May 18, 2011, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor