

By: Anchia, Jackson, et al.

H.B. No. 417

Substitute the following for H.B. No. 417:

By: S. Davis of Harris

C.S.H.B. No. 417

A BILL TO BE ENTITLED

AN ACT

relating to claims for compensation for wrongful imprisonment.

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

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

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

SECTION 2. (a) This section takes effect only if the Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes becomes law.

(b) Subchapter A, Chapter 103, Civil Practice and Remedies Code, is amended by adding Section 103.002 to read as follows:

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

In this section:

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

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

(3) "Wrongfully imprisoned person" has the meaning assigned by Section 501.102, Government Code.

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

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

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

7           (c) The department must provide the information required  
8 under Subsection (b):

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

11           (2) if the wrongfully imprisoned person is not  
12 confined in a penal institution, as soon as is practicable after the  
13 date of the full pardon or granting of relief on the basis of  
14 innocence or actual innocence, respectively.

15           SECTION 3. (a) This section takes effect only if the Act of  
16 the 82nd Legislature, Regular Session, 2011, relating to  
17 nonsubstantive additions to and corrections in enacted codes does  
18 not become law.

19           (b) Subchapter A, Chapter 103, Civil Practice and Remedies  
20 Code, is amended by adding Section 103.002 to read as follows:

21           Sec. 103.002. NOTICE TO WRONGFULLY IMPRISONED PERSON. (a)  
22 In this section:

23           (1) "Department" means the Texas Department of  
24 Criminal Justice.

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

27           (3) "Wrongfully imprisoned person" has the meaning

1 assigned by Section 501.091, Government Code, as added by Chapter  
2 180 (H.B. 1736), Acts of the 81st Legislature, Regular Session,  
3 2009.

4 (b) The department shall provide to each wrongfully  
5 imprisoned person information, both orally and in writing, that  
6 includes:

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

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

13 (c) The department must provide the information required  
14 under Subsection (b):

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

17 (2) if the wrongfully imprisoned person is not  
18 confined in a penal institution, as soon as is practicable after the  
19 date of the full pardon or granting of relief on the basis of  
20 innocence or actual innocence, respectively.

21 SECTION 4. Section 103.051(d), Civil Practice and Remedies  
22 Code, is amended to read as follows:

23 (d) If the comptroller denies the claim, the comptroller  
24 must state the reason for the denial. Not later than the 30th  
25 ~~[10th]~~ day after the date the denial is received, the claimant must  
26 submit an application to cure any problem identified. Not later  
27 than the 45th day after the date an application is received under

1 this subsection, the comptroller shall determine the claimant's  
2 eligibility and the amount owed.

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

5 SUBCHAPTER C. FEES

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

7 (a) A person, including an attorney, may not charge or collect a  
8 fee at a rate that exceeds the maximum rate established under  
9 Section 103.102 for preparing, filing, or curing a claimant's  
10 application under Section 103.051.

11 (b) An attorney may enter into a fee agreement with a  
12 claimant for services related to an application under Section  
13 103.051 only after the attorney has disclosed in writing to the  
14 claimant the maximum rate for fees established under Section  
15 103.102.

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

21 Sec. 103.102. MAXIMUM HOURLY RATE. The maximum rate for  
22 services related to preparing, filing, or curing an application  
23 under Section 103.051 is \$250 per hour.

24 Sec. 103.103. SUBMISSION OF FEE REPORT. (a) Together with  
25 an application for compensation under this chapter or not later  
26 than the 14th day after the date the application or cured  
27 application is filed, a person seeking payment for preparing,

1 filing, or curing the application must file a fee report with the  
2 comptroller's judiciary section.

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

4 (1) if the preparer is an attorney, a sworn copy of the  
5 attorney's fee agreement, signed by the attorney and claimant;

6 (2) the total dollar amount sought for fees;

7 (3) the number of hours the person worked preparing,  
8 filing, or curing the application; and

9 (4) a brief description of work done during those  
10 hours.

11 Sec. 103.104. VIOLATION. An attorney who charges or  
12 collects a fee for services described by Section 103.102 in an  
13 amount that exceeds a fee computed in accordance with the maximum  
14 rate established under that section shall be referred to the Office  
15 of Chief Disciplinary Counsel for the State Bar of Texas.

16 SECTION 6. Section 501.091, Government Code, as added by  
17 Chapter 180 (H.B. 1736), Acts of the 81st Legislature, Regular  
18 Session, 2009, is amended by adding Subsection (d-1) to read as  
19 follows:

20 (d-1) The department shall provide information to  
21 wrongfully imprisoned persons as required by Section 103.002, Civil  
22 Practice and Remedies Code.

23 SECTION 7. Subchapter C, Chapter 103, Civil Practice and  
24 Remedies Code, as added by this Act, applies only to an attorney's  
25 fee agreement entered into on or after January 1, 2012. An  
26 attorney's fee agreement entered into before January 1, 2012, is  
27 governed by the law as it existed immediately before the effective

1 date of this Act, and that law is continued in effect for that  
2 purpose.

3 SECTION 8. This Act takes effect September 1, 2011.