

1-1 By: Anchia, Jackson, et al. (Senate Sponsor - Ellis) H.B. No. 417
1-2 (In the Senate - Received from the House April 27, 2011;
1-3 April 28, 2011, read first time and referred to Committee on State
1-4 Affairs; May 13, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 May 13, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 417 By: Ellis

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to claims for compensation for wrongful imprisonment.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. The heading to Subchapter A, Chapter 103, Civil
1-13 Practice and Remedies Code, is amended to read as follows:

1-14 SUBCHAPTER A. ELIGIBILITY; NOTICE OF ELIGIBILITY [AND CHOICE OF
1-15 COMPENSATION METHOD]

1-16 SECTION 2. Section 103.001(a), Civil Practice and Remedies
1-17 Code, is amended to read as follows:

1-18 (a) A person is entitled to compensation if:

1-19 (1) the person has served in whole or in part a
1-20 sentence in prison under the laws of this state; and

1-21 (2) the person:

1-22 (A) has received a full pardon on the basis of
1-23 innocence for the crime for which the person was sentenced; ~~or~~

1-24 (B) has been granted relief on the basis of
1-25 actual innocence of the crime for which the person was sentenced; or

1-26 (C) has been granted relief in accordance with a
1-27 writ of habeas corpus and:

1-28 (i) the state district court in which the
1-29 charge against the person was pending has entered an order
1-30 dismissing the charge; and

1-31 (ii) the district court's dismissal order
1-32 is based on a motion to dismiss in which the state's attorney states
1-33 that no credible evidence exists that inculcates the defendant and,
1-34 either in the motion or in an affidavit, the state's attorney states
1-35 that the state's attorney believes that the defendant is actually
1-36 innocent of the crime for which the person was sentenced.

1-37 SECTION 3. Subchapter A, Chapter 103, Civil Practice and
1-38 Remedies Code, is amended by adding Section 103.002 to read as
1-39 follows:

1-40 Sec. 103.002. NOTICE TO WRONGFULLY IMPRISONED PERSON. (a)
1-41 In this section:

1-42 (1) "Department" means the Texas Department of
1-43 Criminal Justice.

1-44 (2) "Penal institution" has the meaning assigned by
1-45 Article 62.001, Code of Criminal Procedure.

1-46 (3) "Wrongfully imprisoned person" has the meaning
1-47 assigned by Section 501.091, Government Code, as added by Chapter
1-48 1389 (S.B. 1847), Acts of the 81st Legislature, Regular Session,
1-49 2009.

1-50 (b) The department shall provide to each wrongfully
1-51 imprisoned person information, both orally and in writing, that
1-52 includes:

1-53 (1) guidance on how to obtain compensation under this
1-54 chapter; and

1-55 (2) a list of and contact information for nonprofit
1-56 advocacy groups, identified by the department, that assist
1-57 wrongfully imprisoned persons in filing claims for compensation
1-58 under this chapter.

1-59 (c) The department must provide the information required
1-60 under Subsection (b):

1-61 (1) at the time of the release of the wrongfully
1-62 imprisoned person from a penal institution; or

1-63 (2) as soon as practicable after the department has

2-1 reason to believe that the person is entitled to compensation under
 2-2 Section 103.001(a).

2-3 SECTION 4. Section 103.003, Civil Practice and Remedies
 2-4 Code, is amended to read as follows:

2-5 Sec. 103.003. LIMITATION ON TIME TO FILE. A person seeking
 2-6 compensation under this chapter must file an application with the
 2-7 comptroller for compensation under Subchapter B not ~~[Not]~~ later
 2-8 than the third anniversary of the date:

2-9 (1) the person on whose imprisonment the claim is
 2-10 based received a ~~[the]~~ pardon as provided by Section
 2-11 103.001(a)(2)(A);

2-12 (2) the person was granted relief as provided by
 2-13 Section 103.001(a)(2)(B); or

2-14 (3) an order of dismissal described by Section
 2-15 103.001(a)(2)(C) was signed ~~[was granted relief as required by~~
 2-16 Section 103.001, a person seeking compensation under this chapter
 2-17 must file an application with the comptroller for compensation
 2-18 under Subchapter B].

2-19 SECTION 5. Sections 103.051(a), (b-1), and (d), Civil
 2-20 Practice and Remedies Code, are amended to read as follows:

2-21 (a) To apply for compensation under this subchapter, the
 2-22 claimant must file with the comptroller's judiciary section:

2-23 (1) an application for compensation provided for that
 2-24 purpose by the comptroller;

2-25 (2) a verified copy of the pardon, ~~[or]~~ court order,
 2-26 motion to dismiss, and affidavit, as applicable, justifying the
 2-27 application for compensation;

2-28 (3) a statement provided by the Texas Department of
 2-29 Criminal Justice and any county or municipality that incarcerated
 2-30 the person on whose imprisonment the claim is based in connection
 2-31 with the relevant sentence verifying the length of incarceration;

2-32 (4) if applicable, a statement from the Department of
 2-33 Public Safety verifying registration as a sex offender and length
 2-34 of registration;

2-35 (5) if applicable, a statement from the Texas
 2-36 Department of Criminal Justice verifying the length of time spent
 2-37 on parole; and

2-38 (6) if the claimant is applying for compensation under
 2-39 Section 103.052(a)(2), a certified copy of each child support order
 2-40 under which child support payments became due during the time the
 2-41 claimant served in prison and copies of the official child support
 2-42 payment records described by Section 234.009, Family Code, for that
 2-43 period.

2-44 (b-1) In determining the eligibility of a claimant, the
 2-45 comptroller shall consider only the verified copies of documents
 2-46 ~~[copy of the pardon or court order]~~ filed ~~[by the claimant]~~ under
 2-47 Subsection (a)(2) ~~[(a)]~~. If the filed documents do ~~[pardon or~~
 2-48 ~~court order does]~~ not clearly indicate on their ~~[its]~~ face that the
 2-49 person is entitled to compensation under Section 103.001(a)(2)
 2-50 ~~[pardon or the court order was granted or rendered on the basis of~~
 2-51 ~~the claimant's actual innocence of the crime for which the claimant~~
 2-52 ~~was sentenced]~~, the comptroller shall deny the claim. The
 2-53 comptroller's duty to determine the eligibility of a claimant under
 2-54 this section is purely ministerial.

2-55 (d) If the comptroller denies the claim, the comptroller
 2-56 must state the reason for the denial. Not later than the 30th
 2-57 ~~[10th]~~ day after the date the denial is received, the claimant must
 2-58 submit an application to cure any problem identified. Not later
 2-59 than the 45th day after the date an application is received under
 2-60 this subsection, the comptroller shall determine the claimant's
 2-61 eligibility and the amount owed.

2-62 SECTION 6. Section 103.054, Civil Practice and Remedies
 2-63 Code, is amended to read as follows:

2-64 Sec. 103.054. PAYMENT OF CERTAIN TUITION AND FEES. If
 2-65 requested by the claimant before the seventh anniversary of the
 2-66 relevant date described by Section 103.003 ~~[the claimant received~~
 2-67 ~~the pardon or was granted relief as required by Section 103.001]~~,
 2-68 tuition for up to 120 credit hours, including tuition charged under
 2-69 Section 54.0513, Education Code, or any other law granting an

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

3-5 SECTION 7. Chapter 103, Civil Practice and Remedies Code,
3-6 is amended by adding Subchapter C to read as follows:

3-7 SUBCHAPTER C. FEES

3-8 Sec. 103.101. FEES LIMITED; PREREQUISITES TO FEE AGREEMENT.

3-9 (a) A person, including an attorney, may not charge or collect a
3-10 fee for preparing, filing, or curing a claimant's application under
3-11 Section 103.051 unless the fee is based on a reasonable hourly rate.

3-12 (b) An attorney may enter into a fee agreement with a
3-13 claimant for services related to an application under Section
3-14 103.051 only after the attorney has disclosed in writing to the
3-15 claimant the hourly rate that will be charged for the services.

3-16 (c) An attorney may not collect a fee for preparing, filing,
3-17 or curing a claimant's application under Section 103.051 before a
3-18 final determination is made by the comptroller that the claimant is
3-19 eligible or ineligible for compensation under this chapter.

3-20 Sec. 103.102. SUBMISSION OF FEE REPORT. (a) Together with
3-21 an application for compensation under this chapter or not later
3-22 than the 14th day after the date the application or cured
3-23 application is filed, a person seeking payment for preparing,
3-24 filing, or curing the application must file a fee report with the
3-25 comptroller's judiciary section.

3-26 (b) A fee report under this section must include:

3-27 (1) the total dollar amount sought for fees;

3-28 (2) the number of hours the person worked preparing,
3-29 filing, or curing the application; and

3-30 (3) the name of the applicant.

3-31 (c) A fee report under this section is public information
3-32 subject to Chapter 552, Government Code.

3-33 SECTION 8. Section 501.091, Government Code, as added by
3-34 Chapter 1389 (S.B. 1847), Acts of the 81st Legislature, Regular
3-35 Session, 2009, is amended by amending Subsection (a) and adding
3-36 Subsection (d) to read as follows:

3-37 (a) In this section, "wrongfully imprisoned person" means a
3-38 person who:

3-39 (1) has served in whole or in part a sentence in a
3-40 facility operated by or under contract with the department; and

3-41 (2) has:

3-42 (A) received a pardon for innocence for the crime
3-43 for which the person was sentenced; ~~or~~

3-44 (B) ~~otherwise~~ been granted relief on the basis
3-45 of actual innocence of the crime for which the person was sentenced;
3-46 or

3-47 (C) been granted relief in accordance with a writ
3-48 of habeas corpus and:

3-49 (i) the state district court in which the
3-50 charge against the person was pending has entered an order
3-51 dismissing the charge; and

3-52 (ii) the district court's dismissal order
3-53 is based on a motion to dismiss in which the state's attorney states
3-54 that no credible evidence exists that inculpatates the defendant and,
3-55 either in the motion or in an affidavit, the state's attorney states
3-56 that the state's attorney believes that the defendant is actually
3-57 innocent of the crime for which the person was sentenced.

3-58 (d) The department shall provide information to wrongfully
3-59 imprisoned persons as required by Section 103.002, Civil Practice
3-60 and Remedies Code.

3-61 SECTION 9. Section 501.091, Government Code, as added by
3-62 Chapter 180 (H.B. 1736), Acts of the 81st Legislature, Regular
3-63 Session, 2009, is repealed.

3-64 SECTION 10. Subchapter C, Chapter 103, Civil Practice and
3-65 Remedies Code, as added by this Act, applies only to an attorney's
3-66 fee agreement entered into on or after January 1, 2012. An
3-67 attorney's fee agreement entered into before January 1, 2012, is
3-68 governed by the law as it existed immediately before the effective
3-69 date of this Act, and that law is continued in effect for that

4-1 purpose.

4-2 SECTION 11. Section 103.001(a)(2)(C), Civil Practice and
4-3 Remedies Code, as added by this Act, applies to a person who has
4-4 received an order of dismissal signed on or after September 1, 2009.

4-5 SECTION 12. This Act takes effect immediately if it
4-6 receives a vote of two-thirds of all the members elected to each
4-7 house, as provided by Section 39, Article III, Texas Constitution.
4-8 If this Act does not receive the vote necessary for immediate
4-9 effect, this Act takes effect September 1, 2011.

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