

**House Bill 417**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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~~]

No equivalent provision.

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(Unless otherwise indicated, all SECTIONS below are from FA1)

SECTION 1. Same as House version.

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

(a) A person is entitled 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; ~~[or]~~

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

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

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

(ii) 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 inculcates 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 ~~[on the basis~~

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~~of actual innocence of the crime for which the person was sentenced].~~

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

(e) Notwithstanding Section 103.053(c), annuity payments may be reduced by an amount necessary to make the payments required by Subsection (d), and that amount shall be transferred to an appropriate account as provided by the comptroller by rule to fund that coverage.

SECTION 2. 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.

SECTION 3. 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.

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

(b) The department shall 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 the department, that assist wrongfully imprisoned persons in filing claims for compensation under this chapter.

(c) The department must 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) if the wrongfully imprisoned 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.

No equivalent provision.

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(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 501.091, Government Code, as added by Chapter 1389 (S.B. 1847), Acts of the 81st Legislature, Regular Session, 2009.

(b) The department shall 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 the department, that assist wrongfully imprisoned persons in filing claims for compensation under this chapter.

(c) The department must 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 the department has reason to believe that the person is entitled to compensation under Section 103.001(a).

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

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

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- (1) the person on whose imprisonment the claim is based received a ~~the~~ pardon as provided by Section 103.001(a)(2)(A);
- (2) the person's application for a writ of habeas corpus was granted 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 ~~[was granted relief as required by Section 103.001, a person seeking compensation under this chapter must file an application with the comptroller for compensation under Subchapter B]~~.

SECTION 3. Section 103.051(d), Civil Practice and Remedies Code, is amended to read as follows:

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

- (a) To apply for compensation under this subchapter, the claimant must 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, ~~or~~ court order, motion to dismiss, and affidavit, as applicable, justifying the application for compensation;
  - (3) a statement provided by the Texas Department of Criminal Justice 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 verifying registration as a sex offender and length of registration;
  - (5) if applicable, a statement from the Texas Department of Criminal Justice verifying the length of time spent on parole;

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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, Family Code, for that period.

(b-1) In determining the eligibility of a claimant, the comptroller shall consider only the verified copies of documents [~~copy of the pardon or court order~~] filed [~~by the claimant~~] under Subsection (a)(2) [~~(a)~~]. If the filed documents do [~~pardon or court order does~~] not clearly indicate on their [~~its~~] face that the person is entitled to compensation under Section 103.001(a)(2) [~~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~~], the comptroller shall deny the claim. The comptroller's duty to determine the eligibility of a claimant under this section is purely ministerial.

(d) If the comptroller denies the claim, the comptroller must state the reason for the denial. Not later than the 30th [~~40th~~] day after the date the denial is received, the claimant must submit an application to cure any problem identified. Not later than the 45th day after the date an application is received under this subsection, the comptroller shall determine the claimant's eligibility and the amount owed.

(d) If the comptroller denies the claim, the comptroller must state the reason for the denial. Not later than the 30th [~~40th~~] day after the date the denial is received, the claimant must submit an application to cure any problem identified. Not later than the 45th day after the date an application is received under this subsection, the comptroller shall determine the claimant's eligibility and the amount owed.

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

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

(2) a statement by the comptroller that the comptroller has

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determined the claimant to be eligible for compensation under this subchapter.

No equivalent provision.

SECTION 6. Section 103.054, Civil Practice and Remedies Code, is amended to read as follows:  
Sec. 103.054. PAYMENT OF CERTAIN TUITION AND FEES. If requested by the claimant before the seventh anniversary of the relevant date described by Section 103.003 [~~the claimant received the pardon or was granted relief as required by Section 103.001~~], tuition for up to 120 credit hours, including tuition charged under Section 54.0513, 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 shall be paid on behalf of the claimant.

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

SUBCHAPTER C. FEES

Sec. 103.101. FEES LIMITED; PREREQUISITES TO FEE AGREEMENT. (a) A person, including an attorney, may not charge or collect a fee for preparing, filing, or curing a claimant's application under Section 103.051 unless the fee is based on a reasonable hourly rate.

(b) An attorney may 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) An attorney may not **charge or** collect a fee for preparing,

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

SUBCHAPTER C. FEES

Sec. 103.101. FEES LIMITED; PREREQUISITES TO FEE AGREEMENT. (a) A person, including an attorney, may not charge or collect a fee for preparing, filing, or curing a claimant's application under Section 103.051 unless the fee is based on a reasonable hourly rate.

(b) An attorney may 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) An attorney may not collect a fee for preparing, filing, or

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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) 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, a person seeking payment for preparing, filing, or curing the application must file a fee report with the comptroller's judiciary section.

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

- (1) if the preparer is an attorney, a sworn copy of the attorney's fee agreement, signed by the attorney and claimant;
- (2) the total dollar amount sought for fees;
- (3) the number of hours the person worked preparing, filing, or curing the application; and
- (4) a brief description of work done during those hours.

Sec. 103.103. VIOLATION. An attorney who charges or collects a fee for services that, in the comptroller's opinion, violates Section 103.101 shall be referred to the Office of Chief Disciplinary Counsel for the State Bar of Texas.

SECTION 5. Section 501.091, Government Code, as added by Chapter 180 (H.B. 1736), Acts of the 81st Legislature, Regular Session, 2009, is amended by adding Subsection (d-1) to read as follows:

(d-1) The department shall provide information to wrongfully imprisoned persons as required by Section 103.002, Civil

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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) 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, a person seeking payment for preparing, filing, or curing the application must file a fee report with the comptroller's judiciary section.

(b) A fee report under this section must 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) A fee report under this section is public information subject to Chapter 552, Government Code.

No equivalent provision.

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Practice and Remedies Code.

No equivalent provision.

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

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

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

(2) has:

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

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

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

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

(ii) 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 inculpates 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 ~~[otherwise been granted relief on the basis of actual innocence of the crime for which the person was sentenced].~~

(d) The department shall provide information to wrongfully



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imprisoned persons as required by Section 103.002, Civil Practice and Remedies Code.

No equivalent provision.

SECTION 9. Subchapter C, Chapter 1551, Insurance Code, is amended by adding Section 1551.115 to read as follows:  
Sec. 1551.115. PARTICIPATION BY WRONGFULLY IMPRISONED PERSONS. Subject to Section 103.001, Civil Practice and Remedies Code, a person who is entitled to compensation under Chapter 103, Civil Practice and Remedies Code, is eligible to obtain health benefit plan coverage under the group benefits program in the manner and to the extent that an employee of the Texas Department of Criminal Justice would be entitled to coverage, except that this section does not entitle the person's spouse or other dependent or family member to coverage.

No equivalent provision.

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

No equivalent provision.

SECTION 11. 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.

No equivalent provision.

SECTION 12. Sections 103.001(d) and (e) and 103.051(f), Civil Practice and Remedies Code, and Section 1551.115, Insurance Code, as added by this Act, apply to a person the

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

SECTION 7. This Act takes effect **September 1, 2011**.

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comptroller of public accounts has determined to be eligible for compensation as provided by Section 103.051(b), Civil Practice and Remedies Code, on or after September 1, 2011.

SECTION 13. Same as House version.

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

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