

## **BILL ANALYSIS**

C.S.H.B. 638  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

As DNA analysis has resulted in the exoneration of wrongly convicted persons, the legislature has enacted measures to compensate such persons for loss of income as a result of their wrongful imprisonment, including the payment of annuities to such persons. Currently, annuity payments to a wrongfully convicted person terminate on the date of the person's death. C.S.H.B. 638 seeks to ameliorate the difficulties that surviving spouses of wrongfully imprisoned persons face upon the death of the wrongfully imprisoned person by addressing this issue.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 638 amends the Civil Practice and Remedies Code to authorize a person entitled to compensation for wrongful imprisonment to elect to receive reduced alternative annuity payments, as provided by the bill, instead of standard annuity payments. The bill establishes that alternative annuity payments are payable throughout the life of the claimant and are actuarially reduced from the standard annuity payments to their actuarial equivalent under the option selected by the claimant for providing annuity payments to the claimant's spouse or designated beneficiary after the claimant's death. The bill authorizes the claimant to select one of several specified options providing for the payment of alternative annuity payments to the claimant's spouse or designated beneficiary after the claimant's death. The bill requires an election to receive reduced alternative annuity payments to be made not later than the 45th day after the date on which the claimant files with the comptroller of public accounts the required application on a form prescribed by the comptroller identifying the claimant's spouse or designated beneficiary and specifying the payment option selected. The bill requires the comptroller to develop the form and make the form available not later than December 1, 2015.

C.S.H.B. 638 entitles a claimant who elects to receive alternative annuity payments that are payable to the claimant and the claimant's spouse and survives the claimant's spouse to an increase in the amount of the claimant's monthly annuity payments so that the claimant's monthly payments equal the monthly payments the claimant would have received had the claimant not elected to receive the alternative annuity payments. The bill entitles the claimant to the increased payments beginning the month after the month in which the claimant's spouse dies and ending on the date of the claimant's death.

C.S.H.B. 638 authorizes a claimant who selects a designated beneficiary to receive the remainder of the alternative annuity payments if the claimant dies before 120 or 180 monthly alternative annuity payments have been made, as applicable, to designate one designated beneficiary to receive the remainder of the annuity payments, two or more designated beneficiaries to receive the remainder of the annuity payments in equal amounts, or a primary designated beneficiary to receive the remainder of the annuity payments and an additional beneficiary. The bill requires a designated beneficiary to be a dependent of the claimant.

C.S.H.B. 638 requires the comptroller, if a designated beneficiary who is one of two or more beneficiaries designated to receive the remainder of the annuity payments in equal amounts dies before the remainder of the annuity payments are paid, to recalculate the payments so that the remaining designated beneficiaries receive the remainder of the annuity payments in equal amounts. The bill establishes that an additional beneficiary takes the place of a primary beneficiary if the primary beneficiary dies before the remainder of the annuity payments are paid. The bill authorizes a claimant to select not more than four additional beneficiaries and requires the claimant to determine the order in which the additional beneficiaries are to succeed the primary beneficiary. The bill establishes that the remainder of the annuity payments to additional beneficiaries are paid to one beneficiary at a time until the beneficiary dies or the remaining annuity payments are paid and that the remainder of the annuity payments are payable to the claimant's estate if each additional beneficiary dies before the remainder of the annuity payments are paid.

C.S.H.B. 638 requires the comptroller to begin making alternative annuity payments, if applicable, on the first anniversary of the date of payment of the compensation due under statutory provisions providing for lump-sum compensation. The bill terminates annuity payments to a claimant's spouse or designated beneficiary if the spouse or designated beneficiary is convicted of a crime punishable as a felony after the date the spouse or designated beneficiary begins receiving annuity payments. The bill specifies that such payments terminate on the date of the felony conviction and establishes that if annuity payments to a designated beneficiary are terminated, the remainder of the annuity payments are payable as if the beneficiary died on the date of termination.

C.S.H.B. 638 revises statutory provisions relating to annuity compensation for wrongfully imprisoned persons to clarify the provisions that are applicable only to standard annuity payments and the provisions that are applicable to annuity payments in general.

C.S.H.B. 638 authorizes a person entitled to compensation for wrongful imprisonment who started receiving annuity payments before the bill's effective date to elect to receive any remaining payments as alternative annuity payments by filing the required form with the comptroller not later than the 45th day after the date the comptroller makes the form available. The bill requires the value of the alternative annuity payments for such a person to be actuarially equivalent to the remaining value of the annuity payments the person would receive absent the election.

### **EFFECTIVE DATE**

September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 638 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 103.053, Civil Practice and Remedies Code, is amended by adding Subsection (d) to read as follows:

(d) On the death of a person receiving annuity payments under this section, the person's surviving spouse is entitled to the annuity payments for the life of the surviving spouse.

No equivalent provision.

No equivalent provision. (But see SECTION 1 above.)

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision. (But See SECTION 2 below.)

SECTION 1. Section 103.053, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 103.053. ANNUITY COMPENSATION GENERALLY; STANDARD ANNUITY PAYMENTS.

(a) A person entitled to compensation under Section 103.001(a) is entitled to standard annuity payments under this section unless the person elects to receive alternative annuity payments under Section 103.0535.

(a-1) Standard annuity payments are[;] based on a present value sum equal to the amount to which the person is entitled under Sections 103.052(a)(1) and (b).

(b) Standard [The] annuity payments [under this section] are payable in equal monthly installments for the life of the claimant.

(c) Annuity payments under this chapter [and] must be based on a five percent per annum interest rate and other actuarial factors within the discretion of the comptroller. Annuity [(-) The annuity] payments under this chapter may not be accelerated, deferred, increased, or decreased. A person entitled to annuity payments under this chapter, including a claimant's spouse or designated beneficiary entitled to payments under Section 103.0535, [The applicant] may not sell, mortgage or otherwise encumber, or anticipate the payments, wholly or partly, by assignment or otherwise.

SECTION 2. Subchapter B, Chapter 103, Civil Practice and Remedies Code, is amended by adding Sections 103.0535 and 103.0536 to read as follows:

Sec. 103.0535. ALTERNATIVE ANNUITY COMPENSATION. (a) A person entitled to compensation under Section 103.001(a) may elect to receive reduced alternative annuity payments under this section instead of standard annuity payments.

(b) Alternative annuity payments are payable throughout the life of the claimant and are actuarially reduced from the standard annuity payments to their actuarial equivalent under the option selected under Subsection (c).

(c) A claimant may select one of the following options, which provide that:

(1) after the claimant's death, the alternative annuity payments are payable to and throughout the life of the claimant's spouse;

(2) after the claimant's death, three-fourths of the initial alternative annuity payment amount is payable to and throughout the life of the claimant's spouse;

(3) after the claimant's death, one-half of the initial alternative annuity payment amount is payable to and throughout the life of the claimant's spouse;

(4) if the claimant dies before 180 monthly alternative annuity payments have been made, the remainder of the 180 payments are payable to the claimant's spouse or designated beneficiary; or

(5) if the claimant dies before 120 monthly alternative annuity payments have been made, the remainder of the 120 payments are payable to the claimant's spouse or designated beneficiary.

(d) An election under this section must be made not later than the 45th day after the date on which the claimant files with the comptroller the application required by Section 103.051 on a form prescribed by the comptroller that:

(1) identifies the claimant's spouse or designated beneficiary according to Section 103.0536; and

(2) specifies the option selected under Subsection (c).

(e) A claimant who elects to receive alternative annuity payments under this section that are payable to the claimant and the claimant's spouse and survives the claimant's spouse is entitled to an increase in the amount of the claimant's monthly annuity payments so that the claimant's monthly payments equal the monthly payments the claimant would have received had the claimant not elected to receive the alternative annuity payments. The claimant is entitled to the increased payments beginning the month after the month in which the claimant's spouse dies and ending on the date of the claimant's death.

Sec. 103.0536. DESIGNATED BENEFICIARY. (a) A claimant who selects

a designated beneficiary to receive the remainder of the alternative annuity payments payable under Section 103.0535(c)(4) or (5) may designate:

(1) one designated beneficiary to receive the remainder of the annuity payments;

(2) two or more designated beneficiaries to receive the remainder of the annuity payments in equal amounts; or

(3) a primary designated beneficiary to receive the remainder of the annuity payments and an additional beneficiary.

(b) If a designated beneficiary designated under Subsection (a)(2) dies before the remainder of the annuity payments are paid, the comptroller shall recalculate the payments so that the remaining designated beneficiaries receive the remainder of the annuity payments in equal amounts.

(c) An additional beneficiary designated under Subsection (a)(3) takes the place of the primary beneficiary if the primary beneficiary dies before the remainder of the annuity payments are paid. A claimant may select not more than four additional beneficiaries and shall determine the order in which the additional beneficiaries are to succeed the primary beneficiary. The remainder of the annuity payments under this subsection are paid to one beneficiary at a time until the beneficiary dies or the remaining annuity payments are paid. If each additional beneficiary dies before the remainder of the annuity payments are paid, the remainder of the annuity payments are payable to the claimant's estate.

(d) A designated beneficiary under this section must be a dependent of the claimant.

No equivalent provision.

SECTION 3. Section 103.151(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) The comptroller shall begin making annuity payments [~~to a claimant~~] under Section 103.053(a) or 103.0535 on the first anniversary of the date of payment of the compensation due under Section 103.052.

SECTION 2. Section 103.154(b), Civil Practice and Remedies Code, is amended to read as follows:

SECTION 4. Sections 103.154(a) and (b), Civil Practice and Remedies Code, are amended to read as follows:

(a) Except as provided by Subsection (c), compensation payments [~~to a person~~] under

this chapter terminate if, after the date the claimant [person] becomes eligible for compensation under Section 103.001, the claimant [person] is convicted of a crime punishable as a felony. Annuity payments to a claimant's spouse or designated beneficiary under this chapter terminate if, after the date the spouse or designated beneficiary begins receiving annuity payments, the spouse or designated beneficiary is convicted of a crime punishable as a felony. Payments [Compensation payments] terminate under this subsection on the date of the felony [subsequent] conviction. If annuity payments to a designated beneficiary are terminated under this subsection, the remainder of the annuity payments are payable under Section 103.0536 as if the beneficiary died on the date of termination.

(b) Annuity payments to a person under Section 103.151(b) terminate on the later of the date of the person's death or the date of the death of the person's surviving spouse. Any payments scheduled to be paid after that date are credited to the state and may not be paid to any other person, including the [person's surviving spouse,] heirs, devisees, or beneficiaries under the person's will, or to the person's estate.

(b) Except as provided by Sections 103.0535 and 103.0536:

(1) annuity [Annuity] payments to a person under this chapter [Section 103.151(b)] terminate on the date of the person's death; and  
(2) [~~Any~~] payments scheduled to be paid after that date are credited to the state and may not be paid to any other person, including the person's surviving spouse, heirs, devisees, or beneficiaries under the person's will, or to the person's estate.

SECTION 3. The change in law made by this Act applies only to an annuity of a person who dies on or after the effective date of this Act. The annuity of a person who dies before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act and the former law is continued in effect for that purpose.

No equivalent provision.

No equivalent provision.

SECTION 5. (a) Not later than December 1, 2015, the comptroller shall develop and make available the form described by Section 103.0535(d), Civil Practice and Remedies Code, as added by this Act.

(b) A person entitled to compensation under Section 103.001(a), Civil Practice and Remedies Code, who started receiving annuity payments before the effective date of this Act may elect to receive any remaining payments as alternative annuity payments under Section 103.0535, Civil Practice and Remedies Code,

as added by this Act, by filing the form described by Section 103.0535(d), Civil Practice and Remedies Code, as added by this Act, with the comptroller not later than the 45th day after the date the comptroller makes the form available. The value of alternative annuity payments elected under this section must be actuarially equivalent to the remaining value of the annuity payments the person would receive absent the election.

SECTION 4. This Act takes effect September 1, 2015.

SECTION 6. Same as introduced version.