

**SUBJECT:** Guidance on obtaining compensation for wrongful imprisonment and fees

**COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended

**VOTE:** 10 ayes — Jackson, Lewis, Bohac, Castro, S. Davis, Madden, Raymond, Scott, Thompson, Woolley

1 nay — Hartnett

**WITNESSES:** For — (*Registered, but did not testify*: Joshua Houston, Texas Impact; Brad Parker, Texas Trial Lawyers Association)

Against — Scott Henson, Innocence Project of Texas; Kevin Glasheen

**BACKGROUND:** Under Civil Practice and Remedies Code, ch. 103, a person is entitled to compensation if the person served all or part of a sentence under Texas law, received a full pardon or was granted relief on the basis of actual innocence, and was not serving a concurrent sentence for another crime of which the person was not exonerated. The exonerated person must file an application within three years of the pardon or not-guilty finding.

The comptroller must state the reason for any denied claim. No later than the 10th day after receiving the denial, the claimant must submit an application to fix any problem identified.

**DIGEST:** CSHB 417 would require the Texas Department of Criminal Justice (TDCJ) to provide each wrongfully imprisoned person with written and oral guidance on how to obtain compensation, as well as contact information for nonprofit advocacy groups willing to assist wrongfully imprisoned persons in filing claims for compensation. This information would have to be provided either at the time of release from a penal institution or, if not applicable, as soon as was practicable after the date of the full pardon or granting of relief.

The bill also would extend the amount of time a wrongfully imprisoned person had to file an application to fix a problem from 10 days to 30 days after receiving a denial of compensation from the comptroller.

The bill would limit the rate a person could charge for preparing, filing, or fixing an application for compensation to a maximum of \$250 per hour. An attorney who charged or collected more than that would be referred to the Office of Chief Disciplinary Counsel for the State Bar of Texas. An attorney would have to disclose this maximum rate before entering into a fee agreement and would not be able to charge or collect a fee before the comptroller had made a final determination that the claimant was eligible or ineligible for compensation.

Within 14 days of filing an application, the person who aided in preparing, filing, or fixing the application would have to file a fee report with the comptroller that included:

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

The bill would take effect on September 1, 2011, and would apply only to an attorney's fee agreement entered into on or after January 1, 2012.

**SUPPORTERS  
SAY:**

CSHB 417 would provide additional protections to exonerees who were applying for compensation through the Comptroller's Office. The bill would ensure that exonerees were notified of their right to compensation and provided with a list of nonprofit organizations that could assist them. It also would provide protection against excessive legal fees charged for purely administrative duties. The exoneree compensation claims process is straightforward and does not justify the high legal fees that some attorneys have sought. The application for compensation is based on a one-page form that requests documentation available to the exonerees regarding their conviction and incarceration. Exonerees already have been subjected to sweeping injustices and should not be preyed upon while seeking compensation for their suffering.

The idea of limiting fees is not new. The Texas Disciplinary Rules of Professional Conduct addresses excessive fees in the legal profession. Violations of these tenets can lead to disciplinary action up to disbarment. CSHB 417 would not affect *mandamus* actions for exoneree

compensation. The bill would focus on fees for an administrative application that did not require hiring an attorney.

OPPONENTS  
SAY:

It would set a bad precedent for the Legislature to specify a maximum rate for professional services and be inappropriate to regulate private fee agreements. While professional rules prohibit unconscionable fees, they are based on a determination of whether the fee is reasonable. There is no precedent for setting a maximum hourly rate for private attorneys such as the one contained in the bill. The fee limits in the bill could hinder the ability of exonerees to get the best lawyers.

NOTES:

The committee substitute differs from the original version of the bill by limiting attorney fees to \$250 per hour instead of directing the comptroller to set maximum fees by rule, removing references to a *mandamus* action, and referring attorneys who charge excessive fees to the State Bar instead of stating that the attorney would violate a professional rule prohibiting illegal or unconscionable fees.

The companion bill, SB 749 by Ellis, was referred to the Senate State Affairs Committee on February 23.