

BILL ANALYSIS

Senate Research Center

H.B. 417
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Recent legislation increased the lump-sum compensation for a wrongfully convicted person and addressed lump-sum compensation for a person wrongfully punished as a sex offender. In the wake of this landmark legislation, there have been numerous reports of attorneys who charge excessive fees or fees in violation of the Texas Bar Association's code of professional conduct in exchange for counsel and assistance in completing a request to the comptroller of public accounts for wrongful imprisonment compensation. The request for wrongful imprisonment compensation form does not require the assistance of counsel, and a variety of nonprofit organizations provide assistance in filing claims with the state at no cost.

H.B. 417 amends current law relating to claims for compensation for wrongful imprisonment.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Subchapter A, Chapter 103, Civil Practice and Remedies Code, to read as follows:

SUBCHAPTER A. ELIGIBILITY; NOTICE OF ELIGIBILITY

SECTION 2. Amends Subchapter A, Chapter 103, Civil Practice and Remedies Code, by adding Section 103.002, as follows:

Sec. 103.002. NOTICE TO WRONGFULLY IMPRISONED PERSON. (a) Defines, in this section, "department," "penal institution," and "wrongfully imprisoned person."

(b) Requires the Texas Department of Criminal Justice (TDCJ) to 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 TDCJ, that assist wrongfully imprisoned persons in filing claims for compensation under this chapter.

(c) Requires TDCJ to 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.

SECTION 3. Amends Section 103.051(d), Civil Practice and Remedies Code, as follows:

(d) Requires the comptroller of public accounts (comptroller), if the comptroller denies the claim, to state the reason for the denial. Requires the claimant, not later than the 30th day, rather than 10th day, after the date the denial is received, to submit an application to cure any problem identified. Requires the comptroller, not later than the 45th day after the date an application is received under this subsection, to determine the claimant's eligibility and the amount owed.

SECTION 4. Amends Chapter 103, Civil Practice and Remedies Code, by adding Subchapter C, as follows:

SUBCHAPTER C. FEES

Sec. 103.101. FEES LIMITED; PREREQUISITES TO FEE AGREEMENT. (a) Prohibits a person, including an attorney, from charging or collecting a fee for preparing, filing, or curing a claimant's application under Section 103.051 (Application Procedure) unless the fee is based on a reasonable hourly rate.

(b) Authorizes an attorney to 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) Prohibits an attorney from charging or collecting a fee for preparing, 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) Requires a person seeking payment for preparing, filing, or curing the application, 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, to file a fee report with the comptroller's judiciary section.

(b) Requires a fee report under this section to 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. Requires an attorney who charges or collects a fee for services that, in the comptroller's opinion, violates Section 103.101 to be referred to the Office of Chief Disciplinary Counsel for the State Bar of Texas.

SECTION 5. Amends Section 501.091, Government Code, as added by Chapter 180 (H.B. 1736), Acts of the 81st Legislature, Regular Session, 2009, by adding Subsection (d-1), to require TDCJ to provide information to wrongfully imprisoned persons as required by Section 103.002, Civil Practice and Remedies Code.

SECTION 6. Makes application of Subchapter C, Chapter 103, Civil Practice and Remedies Code, as added by this Act, prospective to January 1, 2012.

SECTION 7. Effective date: September 1, 2011.