

WRONGFUL IMPRISONMENT COMPENSATION ACT

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House Bill 4250 and 4251
Sponsor: Rep. Steve Bieda
Committee: Judiciary

Complete to 10-22-07

A SUMMARY OF HOUSE BILLS 4250 AND 4251 AS INTRODUCED 2-13-07

House Bill 4250 would create an act allowing an individual convicted and imprisoned for a crime he or she did not commit to sue for damages against the state; establish a minimum award for a claimant who prevailed in an action; and specify a statute of limitations for commencing an action under the act. House Bill 4251 would amend the state tax laws to exclude from taxable income the compensation awarded under the provisions of House Bill 4250. The bills are tie-barred to each other.

House Bill 4250

The bill would create the Wrongful Imprisonment Compensation Act. Under the bill, an individual convicted under Michigan law and subsequently imprisoned for one or more crimes that he or she did not commit could bring an action for damages against the state in circuit court as allowed by the new act.

Filing a complaint for compensation. A claimant (person making a claim for compensation under the act) would have to attach documentation to the complaint that established that:

** The claimant had been convicted of one or more crimes under the laws of Michigan, was sentenced to a term of imprisonment, and served at least part of the sentence.

** The claimant's judgment of conviction had been vacated and either the accusatory instrument had been dismissed or the claimant had been determined not to be guilty by retrial or by court finding. (The accusatory instrument is the complaint filed against the claimant that resulted in the conviction and imprisonment that is the subject of the claim for compensation)

** The claimant's actual innocence of the charged offense was demonstrated by the factual or evidentiary basis that had supported the judgment of conviction being vacated or the finding of not guilty. "Actual innocence" would mean that the claimant had not perpetrated and was not an accessory to the acts (crimes) that were the basis of the charge in the accusatory instrument.

The complaint would have to state facts in sufficient detail to permit the court to find that the claimant was likely to succeed at trial in proving that he or she was actually innocent

of the charges, and did not commit or suborn perjury or fabricate evidence to cause or bring about his or her conviction. Pleading guilty to a crime the claimant did not commit or confessing or making an inculpatory statement during interrogation by law enforcement would not constitute perjury or fabricated evidence.

If, after reading a complaint, a court found that the claimant would not be likely to succeed at trial, it would have to dismiss the claim, either on its own motion or on the motion of the state. A claimant would be entitled to judgment if the claims on the complaint required to be documented

Finding for the claimant. A claimant would be entitled to judgment in his or her favor if he or she provided evidence to prove all of the following:

** He or she had been convicted of one or more crimes, had been sentenced to a term of imprisonment, and had served at least part of the sentence.

** The judgment of conviction had been vacated and either the accusatory instrument had been dismissed or the claimant determined to be not guilty upon retrial or by court finding.

** He or she was actually innocent of the charges in that he or she had not perpetrated nor been an accessory to the acts that were the basis of the charge in the accusatory instrument.

** He or she did not commit or suborn perjury or fabricate evidence to cause or bring about the conviction.

Compensation. If a court found that a claimant had been wrongfully convicted and imprisoned, it would have to award damages, including, but not limited to, the following:

** Not less than \$50,000 for each year of incarceration, adjusted to account for inflation from the act's effective date and partial years served.

** Economic damages, including, but not limited to, lost wages, costs associated with criminal defense and efforts to prove his or her innocence, and medical expenses required after release.

** Up to 10 years of physical and mental health care through the State Employees Health Care System; this would be offset by any amount provided through the claimant's employers during that time period.

** Compensation for costs incurred by the claimant for reasonable reintegrative services and mental and physical health care after release from wrongful imprisonment and before the date of the award.

** Reasonable attorney fees, calculated at 10 percent of the damage award (not to exceed \$75,000 plus an adjustment for inflation from the effective date of the act) and expenses. The attorney fees could not be deducted from the compensation awarded to the claimant. The claimant's attorney would not be entitled to receive additional fees from the claimant.

A damage award would not be subject to either a cap applicable to private parties in civil lawsuits or taxes, except for the portion of the award for attorney fees.

Damages could not be awarded for any time during which the claimant had been incarcerated under a concurrent sentence for another conviction.

The claimant would have to accept an award, or a compromise or settlement of the claim, in writing. The acceptance – unless procured by fraud – would be final and conclusive, would constitute a complete release of all claims against the state, and would be a complete bar to any action by the claimant against the state on the same subject matter.

The damage award could not be offset by expenses incurred by the state or any political subdivision (i.e., local governments) including, but not limited to, expenses incurred to secure the claimant's custody or to feed, clothe, or provide medical services to the claimant; the value of any services awarded to the claimant under the act; or the value of any reduction in fees for services awarded to the claimant under the act.

Statute of limitation. An action for compensation under the act would have to be commenced within three years after the entry of a verdict, order, or judgment vacating the conviction, dismissing the accusatory instrument, or a determination of not guilty either by a retrial or a court finding. Any action by the state challenging or appealing a verdict, order, or judgment entered that overturned a conviction would toll (stop) the three-year period. An individual who had been convicted, incarcerated, and released from custody prior to the act's effective date could commence an action within five years of the act's effective date.

Responsibilities of the court. A court that on or after the effective date of the new act entered a verdict, order, or judgment that vacated a conviction, dismissed an accusatory instrument, or determined a claimant was not guilty either by a retrial or a court finding would have to provide a copy of the act to the defendant at the time the verdict, order, or judgment was entered. The individual would have to acknowledge receipt of the act in writing on a form approved by the State Court Administrator's Office (SCAO). The acknowledgment would have to be filed with the court and would be admissible in any proceeding filed by a claimant under the act's provisions.

A claimant entitled to receive a copy of the act that can show he or she did not properly receive the copy would be entitled to a one-year extension of the statute of limitations.

The SCAO would also have to make a reasonable attempt to notify every person in whose favor a verdict, order, or judgment had been entered before enactment of the new act that vacated a conviction, dismissed an accusatory instrument, or determined a

claimant was not guilty either by a retrial or a court finding of his or her rights under the act.

House Bill 4251

The bill would amend the Income Tax Act (MCL 206.30) to exclude from the definition of taxable income compensation received in the tax year pursuant to the Wrongful Imprisonment Compensation Act. The bill would apply to tax years beginning after December 31, 2006 and would allow a claimant under that act to deduct, to the extent included in adjusted gross income, any compensation received as a result of an award in his or her favor.

FISCAL IMPACT:

House Bill 4250 would have an indeterminate fiscal impact on the state and the Judiciary depending upon the number of actions that are brought for damages against the state. Currently, data is not available concerning the number of individuals who, after imprisonment, had their convictions vacated because they were later found not guilty.

Under this bill, it is unknown how many claimants would bring an action for damages. The state would be responsible for paying court-awarded damages to claimants. The bill provides that for each claimant that the court finds was wrongfully convicted and imprisoned, the court shall award damages of at least \$50,000 for each year of incarceration – adjusted by inflation and economic damages, including wages, defense costs, and medical expenses. The court shall also award up to 10 years of physical and mental health care and legal fees of up to \$75,000, plus expenses.

Under the bill's provisions, circuit courts may experience an increase in administrative workload, depending upon the number of actions for damages that they handle. The State Court Administrator's Office would see an increase in administrative costs under the bill's new requirements for providing defendants copies of this act and the additional responsibility of notifying past defendants.

House Bill 4251 would have a minimal state fiscal impact and no direct local fiscal impact.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.