

# HOUSE BILL No. 4250

February 13, 2007, Introduced by Reps. Bieda, Garfield, Condino, Miller and Sheen and referred to the Committee on Judiciary.

A bill to provide compensation for individuals wrongly imprisoned for crimes; to prescribe the powers and duties of certain state governmental officers and agencies; and to provide remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "wrongful imprisonment compensation act".

3           Sec. 2. As used in this act:

4           (a) "Accusatory instrument" means the complaint filed against  
5 the claimant that resulted in the conviction and imprisonment that  
6 are the subject of the claim for compensation under this act.

7           (b) "Claimant" means the individual making a claim for  
8 compensation under this act.

1           Sec. 3. An individual convicted under the law of this state  
2 and subsequently imprisoned for 1 or more crimes that he or she did  
3 not commit may bring an action for damages against this state in  
4 the circuit court as allowed by this act.

5           Sec. 4. (1) The claimant in an action under this act shall  
6 attach to the complaint documentation that establishes all of the  
7 following:

8           (a) The claimant was convicted of 1 or more crimes under the  
9 law of this state, was sentenced to a term of imprisonment for the  
10 crime or crimes, and served at least part of the sentence.

11           (b) The claimant's judgment of conviction was vacated and  
12 either the accusatory instrument was dismissed or the claimant was  
13 determined upon retrial or by court finding to be not guilty.

14           (c) The factual or evidentiary basis that supported the  
15 vacation of the judgment of conviction, dismissal of the accusatory  
16 instrument, or finding of not guilty demonstrated the claimant's  
17 actual innocence of the charged offense. As used in this  
18 subdivision, actual innocence means that the claimant did not  
19 perpetrate and was not an accessory to the acts that were the basis  
20 of the charge in the accusatory instrument.

21           (2) A complaint filed under this section shall state facts in  
22 sufficient detail to permit the court to find that the claimant is  
23 likely to succeed at trial in proving both of the following:

24           (a) The claimant was actually innocent of the charged offense  
25 in that the claimant did not perpetrate and was not an accessory to  
26 the acts that were the basis of the charge in the accusatory  
27 instrument.

1 (b) The claimant did not commit or suborn perjury or fabricate  
2 evidence to cause or bring about his or her conviction. A guilty  
3 plea to a crime the claimant did not commit or a confession or  
4 inculpatory statement made during law enforcement interrogation  
5 does not constitute perjury or fabricated evidence under this  
6 subdivision.

7 (3) A complaint filed under this section shall be verified by  
8 the claimant.

9 (4) If the court finds after reading a complaint filed under  
10 this section that the claimant is not likely to succeed at trial,  
11 it shall dismiss the claim, either on its own motion or on the  
12 motion of this state.

13 Sec. 5. (1) A claimant under this act is entitled to judgment  
14 in the claimant's favor if the claimant provides evidence to prove  
15 all of the following:

16 (a) The claimant was convicted of 1 or more crimes, was  
17 sentenced to a term of imprisonment for the crime or crimes, and  
18 served at least part of the sentence.

19 (b) The claimant's judgment of conviction was vacated and  
20 either the accusatory instrument was dismissed or the claimant was  
21 determined upon retrial or by court finding to be not guilty.

22 (c) The claimant was actually innocent of the charged offense  
23 in that the claimant did not perpetrate and was not an accessory to  
24 the acts that were the basis of the charge in the accusatory  
25 instrument.

26 (d) The claimant did not commit or suborn perjury or fabricate  
27 evidence to cause or bring about his or her conviction. A guilty

1 plea to a crime the claimant did not commit or a confession or  
2 inculpatory statement made during law enforcement interrogation  
3 does not constitute perjury or fabricated evidence under this  
4 subdivision.

5 (2) Subject to subsection (4), if a court finds that a  
6 claimant under this act was wrongfully convicted and imprisoned,  
7 the court shall award damages, including, but not limited to, all  
8 of the following:

9 (a) Not less than \$50,000.00 for each year of incarceration,  
10 as adjusted to account for all of the following:

11 (i) Inflation from the effective date of this act.

12 (ii) Partial years served.

13 (b) Economic damages, including, but not limited to, lost  
14 wages, costs associated with the claimant's criminal defense and  
15 efforts to prove his or her innocence, and medical expenses  
16 required after release.

17 (c) Up to 10 years of physical and mental health care through  
18 the state employee health care system, to be offset by any amount  
19 provided through the claimant's employers during that time period.

20 (d) Compensation for costs incurred by the claimant for  
21 reasonable reintegrative services and mental and physical health  
22 care after release from wrongful imprisonment and before the date  
23 of the award.

24 (e) Reasonable attorney fees, calculated at 10% of the damage  
25 award, not to exceed \$75,000.00 plus an adjustment for inflation  
26 from the effective date of this act, and expenses. The attorney  
27 fees shall not be deducted from the compensation awarded the

1 claimant, and the claimant's attorney is not entitled to receive  
2 additional fees from the claimant.

3 (3) A damage award under subsection (2) is not subject to  
4 either of the following:

5 (a) A cap applicable to private parties in civil lawsuits.

6 (b) Taxes, except for the portion of the award for attorney  
7 fees.

8 (4) Damages shall not be awarded under subsection (2) for any  
9 time during which the claimant was incarcerated under a concurrent  
10 sentence for another conviction.

11 (5) The acceptance by the claimant of an award under this  
12 section, or of a compromise or settlement of the claim, shall be in  
13 writing and, unless it is procured by fraud, is final and  
14 conclusive on the claimant, constitutes a complete release of all  
15 claims against this state, and is a complete bar to any action by  
16 the claimant against this state based on the same subject matter.

17 (6) A damage award under this section shall not be offset by  
18 any of the following:

19 (a) Expenses incurred by this state or any political  
20 subdivision of this state, including, but not limited to, expenses  
21 incurred to secure the claimant's custody or to feed, clothe, or  
22 provide medical services for the claimant.

23 (b) The value of any services awarded to the claimant under  
24 this section.

25 (c) The value of any reduction in fees for services awarded to  
26 the claimant under this section.

27 Sec. 6. (1) A court that enters a verdict, order, or judgment

1 as a result of an event described in section 4(1)(b) on or after  
2 the effective date of this act shall provide a copy of this act to  
3 the defendant at the time the verdict, order, or judgment is  
4 entered. The individual shall be required to acknowledge his or her  
5 receipt of a copy of this act in writing on a form approved by the  
6 state court administrator's office. The acknowledgment shall be  
7 filed with the court and is admissible in any proceeding filed by a  
8 claimant under this act.

9 (2) If a claimant entitled to receive a copy of this act under  
10 subsection (1) shows that he or she did not properly receive the  
11 copy, he or she is entitled to a 1-year extension of the 3-year  
12 time limit in section 7.

13 (3) The state court administrator's office shall make a  
14 reasonable attempt to notify every person in whose favor a verdict,  
15 order, or judgment was entered following an event described in  
16 section 4(1)(b) before enactment of this act of his or her rights  
17 under this act.

18 Sec. 7. An action for compensation under this act shall be  
19 commenced within 3 years after the entry of a verdict, order, or  
20 judgment as the result of an event described in section 4(1)(b).  
21 Any action by this state challenging or appealing a verdict, order,  
22 or judgment entered as the result of an event described in section  
23 4(1)(b) tolls the 3-year period. An individual convicted,  
24 incarcerated, and released from custody before the effective date  
25 of this act shall commence an action under this act within 5 years  
26 of the effective date of this act.

27 Enacting section 1. This act does not take effect unless

1 Senate Bill No. \_\_\_\_ or House Bill No. 4251 (request no. 00516'07 a)  
2 of the 94th Legislature is enacted into law.