

HOUSE BILL No. 4790

April 2, 2009, Introduced by Reps. Switalski, Tlaib, Young, Bettie Scott, Durhal, Johnson, Liss and Nathan 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. Claimant does not include the estate
9 of an individual entitled to make a claim for compensation under

1 this act who is deceased, the personal representative of the
2 estate, or any heir, devisee, beneficiary, or other person who is
3 entitled under other law to pursue a claim for damages, injury, or
4 death suffered by the individual.

5 (c) "This state" means the state of Michigan and its agencies,
6 departments, commissions, and courts. This state does not include a
7 county, township, city, village, school district, or district or
8 authority authorized by law in this state, or a combination of 2 or
9 more of these.

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

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

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

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

23 (c) The factual or evidentiary basis that supported the
24 vacation of the judgment of conviction, dismissal of the accusatory
25 instrument, or finding of not guilty demonstrated the claimant's
26 actual innocence of the charged offense. As used in this
27 subdivision, actual innocence means that the claimant did not

1 perpetrate and was not an accessory to the acts that were the basis
2 of the charge in the accusatory instrument.

3 (2) A complaint filed under this section shall state the claim
4 of the claimant as required under general rules of pleading adopted
5 by the supreme court and shall include statements that both of the
6 following are true:

7 (a) The claimant was actually innocent of the charged offense
8 in that the claimant did not perpetrate and was not an accessory to
9 the acts that were the basis of the charge in the accusatory
10 instrument.

11 (b) The claimant did not commit or suborn perjury or fabricate
12 evidence to cause or bring about his or her conviction. A guilty
13 plea to a crime the claimant did not commit or a confession or
14 inculpatory statement made during law enforcement interrogation
15 does not constitute perjury or fabricated evidence under this
16 subdivision.

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

19 (4) The claimant may file an amended complaint as a matter of
20 course as provided under court rules generally applicable to civil
21 actions adopted by the supreme court. If the court finds after
22 reading a complaint filed under this section that the claimant is
23 not likely to succeed at trial, it shall dismiss the claim, either
24 on its own motion or on the motion of this state. If the dismissal
25 by the court is based on the failure of the claimant to state a
26 claim on which relief can be granted, the court shall dismiss the
27 action without prejudice.

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

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

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

10 (c) The claimant was actually innocent of the charged offense
11 in that the claimant did not perpetrate and was not an accessory to
12 the acts that were the basis of the charge in the accusatory
13 instrument.

14 (d) The claimant did not commit or suborn perjury or fabricate
15 evidence to cause or bring about his or her conviction. A guilty
16 plea to a crime the claimant did not commit or a confession or
17 inculpatory statement made during law enforcement interrogation
18 does not constitute perjury or fabricated evidence under this
19 subdivision.

20 (2) Subject to subsections (4) and (5), if a court finds that
21 a claimant was wrongfully convicted and imprisoned, the court shall
22 award damages, including, but not limited to, all of the following:

23 (a) \$40,000.00 for each year from the date the claimant was
24 incarcerated until the date the claimant's judgment of conviction
25 was vacated, the accusatory instrument was dismissed, or the
26 claimant was found not guilty, whichever is later. The claimant is
27 entitled to damages for the period described in this subsection

1 regardless of whether the claimant was released from incarceration
2 on parole or because the maximum sentence was served. The amount to
3 which the claimant is entitled under this subdivision shall be
4 adjusted for both of the following:

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

6 (ii) Partial years.

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

11 (c) Physical and mental health coverage comparable to that
12 provided under a group health plan available to employees in the
13 classified state civil service, to be offset by any benefits
14 provided by the claimant's employer during the coverage period. The
15 department of community health shall provide health coverage
16 awarded under this subdivision for 10 years from the date of the
17 award by purchasing a health coverage plan, policy, certificate, or
18 contract selected by the director of the department of community
19 health.

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 award under
27 this subdivision shall not include any attorney fees or expenses

1 incurred in bringing a previous action that was dismissed. The
2 award under this subdivision shall not be deducted from the
3 compensation awarded the claimant, and the claimant's attorney is
4 not entitled to receive additional fees from the claimant.

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

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

8 (b) Taxes, except for the portion of the award for attorney
9 fees.

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

13 (5) Damages shall not be awarded under subsection (2) for any
14 injuries sustained by the claimant while imprisoned. The making of
15 a claim or receipt of damages under this act does not preclude a
16 claim or action for damages because of injuries sustained by the
17 claimant while imprisoned.

18 (6) The acceptance by the claimant of an award under this
19 section, or of a compromise or settlement of the claim, shall be in
20 writing and, unless it is procured by fraud, is final and
21 conclusive on the claimant, constitutes a complete release of all
22 claims against this state, and is a complete bar to any action by
23 the claimant against this state based on the same subject matter.

24 (7) A damage award under this section shall not be offset by
25 any of the following:

26 (a) Expenses incurred by this state or any political
27 subdivision of this state, including, but not limited to, expenses

1 incurred to secure the claimant's custody or to feed, clothe, or
2 provide medical services for the claimant.

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

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

7 (8) If a claimant who is awarded damages under this section
8 recovers damages for the wrongful conviction or imprisonment from
9 any other person, the claimant shall reimburse this state for
10 damages paid under this section to the extent of damages recovered
11 from the other person.

12 (9) If a court determines that a claimant was wrongfully
13 convicted and imprisoned, the court shall enter an order that
14 provides that any record of the arrest, fingerprints, conviction,
15 and sentence of the claimant related to the wrongful conviction
16 shall not be made available to the public and shall be removed from
17 the law enforcement information network. A document that is the
18 subject of an order entered under this subsection is exempt from
19 disclosure under the freedom of information act, 1976 PA 442, MCL
20 15.231 to 15.246.

21 Sec. 6. (1) A court that enters a verdict, order, or judgment
22 as a result of an event described in section 4(1)(b) on or after
23 the effective date of this act shall provide a copy of this act to
24 the defendant at the time the verdict, order, or judgment is
25 entered. The individual shall be required to acknowledge his or her
26 receipt of a copy of this act in writing on a form approved by the
27 state court administrator's office. The acknowledgment shall be

1 filed with the court and is admissible in any proceeding filed by a
2 claimant under this act.

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

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

12 Sec. 7. An action for compensation under this act shall be
13 commenced within 3 years after the entry of a verdict, order, or
14 judgment as the result of an event described in section 4(1)(b).
15 Any action by this state challenging or appealing a verdict, order,
16 or judgment entered as the result of an event described in section
17 4(1)(b) tolls the 3-year period. An individual convicted,
18 incarcerated, and released from custody before the effective date
19 of this act shall commence an action under this act within 5 years
20 of the effective date of this act.

21 Enacting section 1. This act does not take effect unless
22 Senate Bill No. ____ or House Bill No. 4791(request no. 01990'09 a)
23 of the 95th Legislature is enacted into law.