

By: Senator(s) Walls

To: Judiciary

## SENATE BILL NO. 3037

1 AN ACT TO PROVIDE CIVIL COMPENSATION FOR AN ERRONEOUS  
2 CONVICTION; TO ENACT CONDITIONS FOR COMPENSATION; TO PRESCRIBE  
3 REQUIREMENTS FOR PROCEEDINGS HEREUNDER; TO ESTABLISH A BURDEN OF  
4 PROOF; TO ELIMINATE DEFENSES; TO PRESCRIBE EVIDENTIARY STANDARDS;  
5 TO PRESCRIBE DAMAGES AND ENACT LIMITATIONS; AND FOR RELATED  
6 PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 SECTION 1. Any person who, having been convicted of a felony  
9 in a court of this state and having been imprisoned therefor in  
10 this state, and who was thereafter or who shall hereafter be  
11 granted a pardon of innocence by the Governor or who shall have  
12 been exonerated on post-conviction relief upon the grounds that  
13 the crime with which the person was charged either was not  
14 committed at all or was not committed by that person, may as  
15 hereinafter provided institute or bring a claim against the State  
16 for the pecuniary loss sustained by the person through his  
17 erroneous conviction and imprisonment, provided the action  
18 therefor is filed within one (1) year of the granting of the  
19 pardon. A person may also file for compensation under this act  
20 who has not been pardoned, but who has discovered evidence  
21 exculpating the person from guilt for the crime for which  
22 convicted, as provided in this act.

23 SECTION 2. A person is entitled to compensation under this  
24 act if the person:

25 (1) (a) Has served in whole or in part a sentence in prison  
26 under the laws of this state;

27 (b) Pleaded "not guilty" to the charge for which he has  
28 been convicted and that led to the imprisonment; and

29 (c) Is not guilty of the crime for which he was  
30 sentenced by virtue of being adjudicated not guilty by a court of  
31 law, or has been pardoned; or

32 (2) Is determined by a court of competent jurisdiction not  
33 to have committed the crime of which convicted on the basis of new  
34 scientific evidence such as DNA analysis or newly discovered  
35 evidence.

36 SECTION 3. (1) A person may bring a suit against the state  
37 under this act, and the state's immunity from the suit is waived  
38 to the extent provided by this act.

39 (2) The suit must be initiated by a verified petition  
40 alleging that the petitioner is entitled to compensation.

41 (3) The suit shall be brought in the circuit or chancery  
42 court of the county of the petitioner's residence at the time the  
43 suit is commenced or in the circuit or chancery court of the First  
44 Judicial District of Hinds County.

45 (4) Service shall be had on the state by serving the  
46 Attorney General who shall represent the state in the proceeding.

47 SECTION 4. The petitioner must establish by a preponderance  
48 of the evidence that he is entitled to compensation and the amount  
49 of compensation to which he is entitled.

50 SECTION 5. The following are not defenses to an action  
51 brought under this act:

52 (1) The judgment of conviction in the trial that resulted in  
53 the claimant's imprisonment; nor

54 (2) An indictment, information, complaint, or other formal  
55 accusation.

56 SECTION 6. (1) In any suit under this act, the court may  
57 admit as evidence the record of the trial at which the petitioner  
58 was convicted and the pardon or proclamation issued to him by the  
59 Governor or the order exonerating the petitioner upon action in a  
60 court of law on post-trial proceedings.

61 (2) The court may also admit all court papers, orders, docket

62 notations, or other writings of record in any court in this state  
63 as proof of the facts set forth in the writings.

64 SECTION 7. (1) If the jury or the judge in a non-jury trial  
65 finds that the claimant is entitled to compensation, the jury or  
66 judge shall assess damages to compensate the claimant fairly and  
67 reasonably for:

68 (a) Physical and mental pain and suffering sustained by  
69 him as a proximate result of the erroneous conviction or  
70 imprisonment from the time of the conviction by the trial court;

71 (b) All reasonable and necessary medical expenses  
72 incurred by him as a proximate result of the erroneous conviction  
73 or imprisonment from the time of the conviction by the trial  
74 court; and

75 (c) Legal, expert witness and other fees associated  
76 with prosecuting an appeal, petition for reversal or other  
77 post-conviction relief based on scientific evidence such as DNA  
78 analysis or other newly discovered evidence.

79 (2) Damages assessed for physical and mental pain and  
80 suffering may not exceed Twenty-five Thousand Dollars (\$25,000).  
81 Total damages assessed under this act may not exceed Fifty  
82 Thousand Dollars (\$50,000) per erroneous conviction. Separate  
83 counts arising from a single criminal act or course of action  
84 shall constitute one conviction.

85 SECTION 8. A person who claims compensation must bring the  
86 action within one (1) year after:

87 (a) The person ceased serving the sentence of  
88 imprisonment;

89 (b) The person was released from custody;

90 (c) The person discovered or should have discovered the  
91 evidence substantiating his innocence, whichever is later; or

92 (d) The person is pardoned or exonerated by a court of  
93 law for the crime.

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95           SECTION 9. This act shall take effect and be in force from  
96 and after July 1, 1999.