

By: Jackson

To: Judiciary

SENATE BILL NO. 2610

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. (1) A person is entitled to compensation under

24 this act if the person:

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

54 (b) An indictment, information, complaint, or other

55 formal 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 nonjury 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
81 (\$25,000.00). Total damages assessed under this act may not
82 exceed Fifty Thousand Dollars (\$50,000.00) per erroneous

83 conviction. Separate counts arising from a single criminal act or
84 course of action 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.

94 SECTION 9. This act shall take effect and be in force from
95 and after July 1, 2000.