

By: Senator(s) Jackson (32nd)

To: Judiciary, Division A

SENATE BILL NO. 2200

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

22 **SECTION 2.** (1) A person is entitled to compensation under
23 this act if the person:

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

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

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

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

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

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

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

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

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

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

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

53 (b) An indictment, information, complaint or other
54 formal accusation.

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

60 (2) The court may also admit all court papers, orders,
61 docket notations or other writings of record in any court in this
62 state as proof of the facts set forth in the writings.

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

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

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

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

78 (2) Damages assessed for physical and mental pain and
79 suffering may not exceed Twenty-five Thousand Dollars
80 (\$25,000.00). Total damages assessed under this act may not
81 exceed Fifty Thousand Dollars (\$50,000.00) per erroneous
82 conviction. Separate counts arising from a single criminal act or
83 course of action shall constitute one (1) conviction.

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

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

88 (b) The person was released from custody;

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

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

93 (e) The effective date of this act.

94 **SECTION 9.** This act shall take effect and be in force from
95 and after July 1, 2004.