

By: Senator(s) Tollison, Butler, Davis
(36th), Jackson (32nd)

To: Judiciary, Division B

SENATE BILL NO. 3024
(As Sent to Governor)

1 AN ACT PROVIDING FOR CLAIMS FOR WRONGFUL CONVICTION AND
2 IMPRISONMENT; TO EXPRESS LEGISLATIVE INTENT; TO REQUIRE CLAIMANTS
3 TO PRESENT STATEMENT OF CLAIM FOR COMPENSATION; TO ENACT
4 STANDARDS; TO PROVIDE FOR PRESENTATION OF CLAIMS; TO ENACT
5 STANDARDS FOR JUDGMENT AND AWARD; TO ENACT A STATUTE OF
6 LIMITATIONS; TO PROVIDE FOR EXTENSION THEREOF; TO PROVIDE FOR THE
7 RIGHT OF APPEAL FROM AN ADVERSE DECISION; AND FOR RELATED
8 PURPOSES.

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

10 **SECTION 1.** The Legislature finds that innocent persons who
11 have been wrongly convicted of felony crimes and subsequently
12 imprisoned have been uniquely victimized, have distinct problems
13 reentering society, and should be compensated. In light of the
14 particular and substantial horror of being imprisoned for a crime
15 one did not commit, the Legislature intends by enactment of the
16 provisions of this act that innocent people who are wrongfully
17 convicted be able to receive monetary compensation.

18 **SECTION 2.** (1) In order to present an actionable claim for
19 wrongful conviction and imprisonment under this section, a
20 claimant must establish by documentary evidence that:

21 (a) The claimant has been convicted of one or more
22 felonies and subsequently sentenced to a term of imprisonment and
23 has served all or any part of the sentence;

24 (b) On grounds not inconsistent with innocence:

25 (i) The claimant was pardoned for the felony or
26 felonies for which sentenced and which are the grounds for the
27 complaint and the pardon is based on the innocence of the claimant
28 which must be affirmatively stated in the pardon; or



29 (ii) The judgment of conviction was vacated and/or
30 reversed;

31 (c) If there was a vacatur or reversal, either the
32 accusatory instrument was dismissed or nol prossed; or if a new
33 trial was held, the defendant was found not guilty;

34 (d) The claimant's claim is not time-barred by the
35 provisions of this act; and

36 (e) The claimant did not intentionally waive any
37 appellate or post-conviction remedy otherwise available in order
38 to benefit under this act.

39 (2) The claim shall be verified by the claimant.

40 (3) If the court finds after reading the claim that the
41 claimant has not demonstrated the foregoing, it shall dismiss the
42 claim, either on its own motion or on the state's motion. This
43 dismissal shall be without prejudice to allow adequate refileing
44 within ninety (90) days.

45 **SECTION 3.** Jurisdiction of all claims of wrongful conviction
46 and imprisonment brought under this act shall lie in the circuit
47 court of the county in which the claimant was convicted. The
48 respondent will be the State of Mississippi, which will be
49 represented by the Attorney General's office.

50 **SECTION 4.** (1) In order to obtain a judgment under this
51 act, a claimant must prove by a preponderance of the evidence
52 that:

53 (a) He was convicted of one or more felonies and
54 subsequently sentenced to a term of imprisonment, and has served
55 all or any part of the sentence; and

56 (i) He has been pardoned for the felony or
57 felonies for which he was sentenced and which are the grounds for
58 the complaint and the pardon is based on the innocence of the
59 claimant which must be affirmatively stated in the pardon; or

60 (ii) His judgment of conviction was reversed or
61 vacated; and



62 1. The accusatory instrument was dismissed or
63 nol prossed; or

64 2. If a new trial was ordered, he was found
65 not guilty at the new trial; and

66 (b) He did not commit the felony or felonies for which
67 he was sentenced and which are the grounds for the complaint, or
68 the acts or omissions for which he was sentenced did not
69 constitute a felony; and

70 (c) He did not commit or suborn perjury, or fabricate
71 evidence to bring about his conviction.

72 (2) If the court finds that the claimant was wrongfully
73 convicted and incarcerated pursuant to subsection (1) of this
74 section, the court shall award:

75 (a) Fifty Thousand Dollars (\$50,000.00) for each year
76 of incarceration regardless of the number of felonies for which a
77 claimant was convicted, but the total amount for each claimant
78 shall not exceed Five Hundred Thousand Dollars (\$500,000.00).
79 There shall be no compensation for any preindictment detention.

80 This award shall be paid to the claimant in installments of Fifty
81 Thousand Dollars (\$50,000.00) per year until the award is fully
82 paid. The state may purchase an annuity to satisfy this
83 obligation.

84 (b) Reasonable attorney's fees for bringing a claim
85 under this act calculated at ten percent (10%) of the amount
86 awarded under Section 4(2)(a) of this act for preparing and filing
87 the claim, twenty percent (20%) for litigating the claim if it is
88 contested by the Attorney General, and twenty-five percent (25%)
89 if the claim is appealed, plus expenses. These fees shall not be
90 deducted from the compensation due the claimant, nor is counsel
91 entitled to receive additional fees from the client for a claim
92 under this section.

93 (3) The award shall not be subject to:



94 (a) Any cap applicable to private parties in civil
95 lawsuits;

96 (b) Any taxes, except that those portions of the
97 judgment awarded as attorney's fees for bringing a claim under
98 this act shall be taxable as income to the attorney; or

99 (c) Treatment as gross income to a claimant under the
100 provisions of Title 27, Chapter 7, Mississippi Code of 1972.

101 (4) A claimant may choose to pursue a claim under this act
102 in lieu of pursuing a claim against the State of Mississippi or a
103 political subdivision thereof under the Mississippi Tort Claims
104 Act, Section 11-46-1 et seq., Mississippi Code of 1972. Any
105 claimant who obtains an award under this act may not obtain an
106 award by reason of the same subject against the State of
107 Mississippi or a political subdivision thereof under the
108 provisions of the Mississippi Tort Claims Act, Section 11-46-1 et
109 seq., Mississippi Code of 1972.

110 (5) The immunity of the State of Mississippi and any
111 political subdivision thereof is hereby waived with respect to the
112 claims described in this act and within the limits prescribed by
113 this act.

114 **SECTION 5.** (1) An action for compensation brought by a
115 wrongfully convicted person under the provisions of this act shall
116 be commenced within three (3) years after either the grant of a
117 pardon or the grant of judicial relief and satisfaction of other
118 conditions described in Section 2(1) of this act; provided,
119 however, that any action by the state challenging or appealing the
120 grant of said judicial relief shall toll the three-year period.
121 Persons convicted, incarcerated and released from custody prior to
122 July 1, 2009, shall commence an action under this act not later
123 than June 30, 2012.

124 (2) Notwithstanding any other provision of law, failure to
125 file any applicable Notice of Claim shall not bar filing of a
126 claim under this act.



127 **SECTION 6.** Any party aggrieved by a decision as to a claim
128 brought under this act is entitled to appeal the decision as in
129 other civil cases.

130 **SECTION 7.** If a claimant dies prior to the full payment of
131 any claim awarded under this act, the remaining payments shall be
132 made to his or her estate or heirs. If any potential claimant
133 dies prior to the filing of a claim, the claim may be filed by and
134 on behalf of his or her estate or heirs.

135 **SECTION 8.** Any claimant who receives compensation under this
136 act shall sign a release from all claims against the state
137 regarding the incarceration for which the claimant receives
138 compensation.

139 **SECTION 9.** This act shall take effect and be in force from
140 and after July 1, 2009.

