

By: Senator(s) Doty

To: Judiciary, Division A

SENATE BILL NO. 2724

1 AN ACT TO AMEND SECTION 11-44-5, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT A CLAIM FOR WRONGFUL CONVICTION IS TO BE HEARD BY THE
3 COURT WITHOUT A JURY; TO AMEND SECTION 11-44-7, MISSISSIPPI CODE
4 OF 1972, TO REVISE THE TERMS UNDER WHICH A CLAIM FOR WRONGFUL
5 CONVICTION CAN BE UPHELD; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 11-44-5, Mississippi Code of 1972, is
8 amended as follows:

9 11-44-5. Jurisdiction of all claims of wrongful conviction
10 and imprisonment brought under this chapter shall lie in the
11 circuit court of the county in which the claimant was convicted.
12 The judge of the appropriate circuit court shall hear and
13 determine, without a jury, any suit filed under this chapter. The
14 respondent will be the State of Mississippi, which will be
15 represented by the Attorney General's office.

16 **SECTION 2.** Section 11-44-7, Mississippi Code of 1972, is
17 amended as follows:



11-44-7. (1) In order to obtain a judgment under this chapter, a claimant must prove by a preponderance of the evidence that:

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

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

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

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

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

(b) He did not commit the felony or felonies for which he was sentenced and which are the grounds for the complaint, or the acts or omissions for which he was sentenced did not constitute a felony or any other criminal offense under Mississippi law; and

(c) He did not commit or suborn perjury, * * * fabricate evidence * * *, or make a false statement that caused or brought about his conviction * * *; a confession, admission or statement coerced by law enforcement and later determined to be



43 false does not constitute fabrication of evidence or the making of
44 a false statement under this subsection; and

45 (d) He did not plead guilty to the felony or felonies
46 for which he was sentenced and which are the grounds for the
47 complaint.

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

51 (a) Fifty Thousand Dollars (\$50,000.00) for each year
52 of incarceration regardless of the number of felonies for which a
53 claimant was convicted, but the total amount for each claimant
54 shall not exceed Five Hundred Thousand Dollars (\$500,000.00).
55 There shall be no compensation for any preindictment detention.
56 This award shall be paid to the claimant in installments of Fifty
57 Thousand Dollars (\$50,000.00) per year until the award is fully
58 paid. The state may purchase an annuity to satisfy this
59 obligation.

60 (b) Reasonable attorney's fees for bringing a claim
61 under this chapter calculated at ten percent (10%) of the amount
62 awarded under paragraph (a) of this subsection for preparing and
63 filing the claim, twenty percent (20%) for litigating the claim if
64 it is contested by the Attorney General, and twenty-five percent
65 (25%) if the claim is appealed, plus expenses. These fees shall
66 not be deducted from the compensation due the claimant, nor is



counsel entitled to receive additional fees from the client for a claim under this section.

(3) The award shall not be subject to:

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

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

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

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

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

SECTION 3. This act shall take effect and be in force from and after July 1, 2019.

