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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 714**      Session of  
2007

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INTRODUCED BY FERLO, GREENLEAF, COSTA, STOUT, WASHINGTON,  
KITCHEN, STACK AND FONTANA, APRIL 2, 2007

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REFERRED TO JUDICIARY, APRIL 2, 2007

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AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, providing for wrongful  
3 conviction and imprisonment.

4 The General Assembly finds that innocent persons who have  
5 been wrongfully convicted of crimes and subsequently imprisoned  
6 have been uniquely victimized, and have difficulty achieving  
7 legal redress due to a variety of substantive and technical  
8 obstacles in the law, and that such persons should have an  
9 available avenue of redress over and above the existing tort  
10 remedies to seek compensation for damages. In light of the  
11 particular and substantial horror of being imprisoned for a  
12 crime one did not commit, the General Assembly intends by  
13 enactment of the provisions of this act that those persons who  
14 can demonstrate that they were imprisoned despite their actual  
15 innocence be able to recover damages.

16 The General Assembly of the Commonwealth of Pennsylvania  
17 hereby enacts as follows:

18 Section 1. Chapter 85 of Title 42 of the Pennsylvania

1 Consolidated Statutes is amended by adding a subchapter to read:

2 SUBCHAPTER B.1

3 CLAIMS FOR WRONGFUL CONVICTION AND IMPRISONMENT

4 Sec.

5 8531. Eligibility.

6 8532. Statement of claim.

7 8533. Presentation of claim.

8 8534. Judgment and award.

9 8535. Notice.

10 8536. Statute of limitations.

11 8537. Right of appeal.

12 § 8531. Eligibility.

13 Any person convicted and subsequently imprisoned for one or  
14 more crimes which he did not commit may, under the conditions  
15 hereinafter provided, present a claim for damages against the  
16 Commonwealth.

17 § 8532. Statement of claim.

18 (a) Evidence of claim.--In order to present an actionable  
19 claim for wrongful conviction and imprisonment, the claimant  
20 must establish by documentary evidence that:

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

24 (2) The claimant's actual innocence has been established  
25 by:

26 (i) being pardoned for the crime or crimes for which  
27 the claimant was sentenced and which are the grounds for  
28 the complaint; or

29 (ii) having the judgment of conviction of the  
30 claimant reversed or vacated and the accusatory

1 instrument dismissed or, if a new trial was ordered,  
2 either being found not guilty at the new trial or not  
3 being retried and the accusatory instrument dismissed;  
4 provided that the judgment of conviction was reversed or  
5 vacated, or the accusatory instrument was dismissed on  
6 grounds not inconsistent with innocence or because the  
7 statute, or application thereof, on which the accusatory  
8 instrument was based violated the Constitution of the  
9 United States or the Constitution of Pennsylvania.

10 (3) The claimant's claim is not time-barred by the  
11 provisions of section 8536 (relating to statute of  
12 limitations).

13 (b) Statement of facts.--The claim shall state facts in  
14 sufficient detail to permit the court to find that the claimant  
15 is likely to succeed at trial in proving that:

16 (1) the claimant did not commit any of the acts charged  
17 in the accusatory instrument or the claimant's acts or  
18 omissions charged in the accusatory instrument did not  
19 constitute a crime; and

20 (2) the claimant did not commit or suborn perjury or  
21 fabricate evidence to cause or bring about his conviction. A  
22 guilty plea to a crime the claimant did not commit does not  
23 constitute perjury under this paragraph.

24 (c) Verification.--The claim shall be verified by the  
25 claimant.

26 (d) Dismissal.--If the court finds after reading the claim  
27 that the claimant is not likely to succeed at trial, it shall  
28 dismiss the claim, either on its own motion or on the motion of  
29 the Commonwealth.

30 § 8533. Presentation of claim.

1 All claims of wrongful conviction and imprisonment shall be  
2 presented to and heard by the court of common pleas of this  
3 Commonwealth in accordance with the Pennsylvania Rules of Civil  
4 Procedure.

5 § 8534. Judgment and award.

6 (a) Elements of proof.--In order to obtain a judgment in the  
7 claimant's favor, the claimant must provide evidence to prove  
8 that:

9 (1) he was convicted of one or more crimes and  
10 subsequently sentenced to a term of imprisonment, and has  
11 served all or any part of the sentence;

12 (2) (i) the claimant has been pardoned for the crime or  
13 crimes for which he was sentenced and which are the  
14 grounds for the complaint; or

15 (ii) the claimant's judgment of conviction was  
16 reversed or vacated and the criminal action against the  
17 claimant was dismissed or, if a new trial was ordered,  
18 either the claimant was found not guilty at the new trial  
19 or he was not retried and the criminal action dismissed;  
20 provided that the judgment of conviction was reversed or  
21 vacated, or the criminal proceeding was dismissed, on  
22 grounds not inconsistent with innocence or because the  
23 statute, or application thereof, on which the accusatory  
24 instrument was based violated the Constitution of the  
25 United States or the Constitution of Pennsylvania;

26 (3) the claimant did not commit any of the acts charged  
27 in the accusatory instrument, nor did his acts or omissions  
28 charged in the accusatory instrument constitute a crime; and

29 (4) the claimant did not commit or suborn perjury, or  
30 fabricate evidence to cause or bring about his conviction. A

1 guilty plea to a crime the claimant did not commit does not  
2 constitute perjury for the purposes of this paragraph.

3 (b) Damages.--If the court finds that the claimant was  
4 wrongfully convicted and imprisoned, it shall award damages as  
5 follows:

6 (1) not less than \$50,000 for each year of  
7 incarceration, with an additional \$50,000 for each year  
8 served on death row, as adjusted by the Auditor General to  
9 account for:

10 (i) inflation from the date of enactment; and

11 (ii) partial years served;

12 (2) economic damages, including, but not limited to,  
13 lost wages, costs associated with the claimant's criminal  
14 defense and efforts to prove the claimant's innocence, and  
15 medical expenses required after release;

16 (3) up to ten years of physical and mental health care  
17 through the State employees' health care system, to be offset  
18 by any amount provided through the claimant's employers  
19 during that time period;

20 (4) compensation for any reasonable reintegrative  
21 services and mental and physical health care costs incurred  
22 by the claimant for the time period between his release from  
23 mistaken incarceration and the date of his award; and

24 (5) reasonable attorney fees calculated at 10% of the  
25 damage award plus expenses. These fees, exclusive of  
26 expenses, shall not exceed \$75,000, as adjusted by the  
27 Auditor General to account for inflation from the effective  
28 date of this section. These fees shall not be deducted from  
29 the compensation due the claimant nor is counsel entitled to  
30 receive additional fees from the client.

1 (c) Limitations.--The damage award shall not be subject to:

2 (1) any cap applicable to private parties in civil  
3 lawsuits; or

4 (2) any taxes, except for those portions of the judgment  
5 awarded as attorney fees for bringing a claim under this  
6 subchapter.

7 (d) Award, compromise and settlement.--The acceptance by the  
8 claimant of any such award, compromise or settlement shall be in  
9 writing and shall, except when procured by fraud, be final and  
10 conclusive on the claimant and shall constitute a complete  
11 release of any claim against the State and a complete bar to any  
12 action by the claimant against the State by reason of the same  
13 subject matter.

14 (e) Offset.--The damage award shall not be offset by any  
15 expenses incurred by the Commonwealth or any political  
16 subdivision of the Commonwealth, including, but not limited to,  
17 expenses incurred to secure the claimant's custody, or to feed,  
18 clothe or provide medical services for said claimant, nor shall  
19 the court offset against the award the value of any services or  
20 reduction in fees for services or the value thereof to be  
21 provided to the claimant that may be awarded to the claimant  
22 pursuant to this section.

23 § 8335. Notice.

24 (a) Court.--A court granting judicial relief consistent with  
25 the criteria set forth in this subchapter shall provide a copy  
26 of this subchapter to the individual seeking such relief at the  
27 time the court determines that the claimant's claim is likely to  
28 succeed. The individual shall be required to acknowledge his  
29 receipt of a copy of this subchapter in writing on a form  
30 established by the Supreme Court. The acknowledgment shall be

1 entered on the docket by the court and shall be admissible in  
2 any proceeding filed by a claimant under this subchapter.

3 (b) Parole board.--The Pennsylvania Board of Probation and  
4 Parole, upon the issuance of a full pardon on or after the  
5 effective date of this subchapter, shall provide a copy of this  
6 subchapter to the individual at the time of the granting of the  
7 pardon. The individual shall be required to acknowledge his  
8 receipt of a copy of this subchapter in writing on a form  
9 established by the parole board, which shall be retained on file  
10 by the parole board as part of its official records and shall be  
11 admissible in any proceeding filed by a claimant under this  
12 subchapter.

13 (c) Failure to provide notice.--In the event a claimant  
14 granted judicial relief or a full pardon on or after the  
15 effective date of this subchapter shows he did not properly  
16 receive a copy of the information required by this section, the  
17 claimant shall receive a one-year extension on the three-year  
18 time limit provided in section 8536 (relating to statute of  
19 limitations).

20 (d) Notice by Supreme Court.--The Supreme Court shall make  
21 reasonable attempts to notify all persons pardoned or granted  
22 judicial relief consistent with this subchapter before the  
23 enactment of this subchapter of their rights under this  
24 subchapter.

25 § 8536. Statute of limitations.

26 An action for compensation brought by a wrongfully convicted  
27 person under the provisions of this subchapter shall be  
28 commenced within three years after either the grant of a pardon  
29 or the grant of judicial relief and satisfaction of other  
30 conditions described in section 8532 (relating to statement of

1 claim), provided, however, that any action by the Commonwealth  
2 challenging or appealing the grant of said judicial relief shall  
3 toll the three-year period. Persons convicted, incarcerated and  
4 released from custody prior to the effective date of this  
5 subchapter shall commence an action under this subchapter within  
6 five years of the effective date.

7 § 8537. Right of appeal.

8 Any party is entitled to the rights of appeal afforded  
9 parties in a civil action in accordance with the Pennsylvania  
10 Rules of Civil Procedure.

11 Section 2. This act shall take effect in 60 days.