

House Bill 682

By: Representatives Benfield of the 85th, Crawford of the 127th, Brooks of the 63rd, Bordeaux of the 162nd, Stephenson of the 92nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To make legislative findings; to amend Article 4 of Chapter 5 of Title 28 of the Official Code
2 of Georgia Annotated, relating to the claims advisory board, so as to provide for
3 compensation of persons wrongfully convicted and imprisoned; to provide for a short title;
4 to provide for recommendations by the board as payment of compensation; to provide for
5 procedural rules; to provide for claims for compensation; to provide for uniform standards
6 for compensation; to provide when compensation may be recommended and the factors to
7 be considered; to provide for limitations of claims; to provide for reports on claims being
8 transmitted to the General Assembly; to provide for exceptions; to provide for related
9 matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 The General Assembly finds that due to advancements in science and technology, wrongfully
13 convicted persons are being discovered with a higher frequency than in the past. The General
14 Assembly is sympathetic to the tremendous burden a wrongfully convicted person faces and
15 further finds that there is a need to create a uniform method for fairly and reasonably
16 compensating wrongfully convicted persons.

17 **SECTION 2.**

18 Article 4 of Chapter 5 of Title 28 of the Official Code of Georgia Annotated, relating to the
19 claims advisory board, is amended by adding a new part to the end of the article to read as
20 follows:

21 "Part 4

22 28-5-110.

23 This act shall be known and may be cited as the 'Innocent Persons' Compensation Act.'

1 28-5-111.

2 (a) The Claims Advisory Board shall have authority to consider and make
3 recommendations to the General Assembly concerning payment of compensation to any
4 innocent person who has been convicted of and imprisoned for one or more crimes which
5 he or she did not commit. In a particular case the board may appoint a special master to
6 take testimony, supervise or conduct necessary investigations, and report to the board; but
7 ultimate recommendation on any claim shall be made only by the board.

8 (b) Proceedings before the board shall be governed by rules established by the board; and
9 such rules shall emphasize, to the greatest extent possible, informality of proceedings. No
10 claimant shall be required to be represented or accompanied by an attorney.

11 (c) In order to be eligible for compensation under this part, the claimant shall establish by
12 clear and convincing evidence to the board that:

13 (1) The claimant was convicted of one or more crimes and was sentenced to a term of
14 imprisonment;

15 (2) The claimant has served all or part of the sentence of imprisonment;

16 (3) The claimant proclaims his or her innocence; and

17 (4) The claimant's innocence has been established by:

18 (A) Pardon by the State Board of Pardons and Paroles;

19 (B) An order reversing or vacating the claimant's conviction and the indictment or
20 accusation is dismissed or nol prossed; or

21 (C) Issuance of an order for new trial, and either the indictment or accusation is
22 dismissed or nol prossed.

23 (d) A claimant shall not be entitled to compensation under this part for any portion of a
24 sentence spent incarcerated during which the claimant was also serving a concurrent
25 sentence for another crime to which this part does not apply.

26 28-5-112.

27 (a) Any person who is eligible for compensation under this part shall give notice thereof
28 in accordance with Part 2 of Article 4 of this chapter in order to have such claim brought
29 before the General Assembly for action.

30 (b) Any such claimant shall also, prior to introduction of a resolution for compensation,
31 submit all documents called for by the board, including the documents required by
32 subsection (c) of Code Section 28-5-111 and reports or documents detailing any type of
33 compensation that the claimant is seeking in relation to the injury for which compensation
34 is claimed.

1 28-5-113.

2 (a) In making its recommendation, the board shall, insofar as practicable, formulate
3 standards for uniform application in recommending compensation, taking into
4 consideration rates and amounts of compensation payable for injuries or property damage
5 under other laws of this state and of the United States. In making its recommendation, the
6 board shall:

7 (1) Include not less than \$50,000.00 per year for each year of imprisonment. A pro rata
8 amount for any portion of each year of imprisonment shall be awarded. In calculating
9 time of imprisonment, the board shall include any time spent awaiting trial;

10 (2) Annually adjust the maximum awards authorized by this Code section to reflect the
11 percentage of any increase in the Consumer Price Index of the Bureau of Labor Statistics
12 of the United States Department of Labor for the immediately preceding calendar year;
13 provided, however, that such annual percentage increase in the award amount shall not
14 exceed 5 percent regardless of the percentage increase in the Consumer Price Index. In
15 any year in which there is no percentage increase in such Consumer Price Index, there
16 shall be no adjustment to the award amount for that calendar year; and

17 (3) Include the amount of any fine or court costs imposed and paid, and the reasonable
18 attorney's fees and other expenses incurred by the claimant in connection with all
19 associated criminal proceedings and appeals, and, if applicable, in connection with
20 obtaining the claimant's discharge from confinement.

21 (b) If requested by the claimant:

22 (1) The Department of Human Resources shall provide appropriate counseling for one
23 year to the claimant at a mutually agreed-on location at no charge to the claimant; and

24 (2) The board shall include up to \$10,000.00 for tuition for career and technical training
25 at any institution in the University System of Georgia or institution in the Department of
26 Technical and Adult Education, which amount is contingent upon successful completion
27 of the training.

28 (c) The board may direct that payment of compensation claims be in a lump sum or in the
29 form of an annuity contract funded by the board on behalf of the claimant, provided that:

30 (1) Such annuity contract shall be secured from an insurance company licensed under the
31 laws of the State of Georgia and whose claims paying ability is rated as superior or
32 excellent by at least two nationally recognized rating services; and

33 (2) The contract, by its terms, cannot be sold, transferred, assigned, discounted, or used
34 as security for a loan.

1 28-5-114.

2 (a) In any case in which a person is harmed, injured, or sustains property damage for
3 which compensation is authorized by this part, the board may recommend to the General
4 Assembly payment of compensation:

5 (1) To or for the benefit of the claimant; or

6 (2) In the case of death of the claimant, to or for the benefit of any one or more of the
7 heirs at law of the claimant, who at the time of the claimant's demise were dependent
8 upon the claimant for over one-half of their support.

9 (b) In making its recommendation to the General Assembly, the board shall consider all
10 circumstances surrounding the claim, including, but not limited to, the length of the
11 claimant's wrongful incarceration; the circumstances and any injuries the claimant
12 sustained while incarcerated; any need for financial aid present; and any other relevant
13 matters.

14 (c) The board shall, in an advisory way only, recommend to the General Assembly
15 payment of compensation and the amount thereof; and the General Assembly shall act on
16 such recommendation in accordance with law and the rules of the House of Representatives
17 and Senate for action upon such resolutions.

18 28-5-115.

19 (a) The General Assembly may by resolution appropriate money for payment of a claim
20 for compensation upon the recommendation of the board as set forth in Code Section
21 28-5-113. Any award made by the General Assembly shall not be subject to:

22 (1) Any monetary limitation of damages awarded in civil actions;

23 (2) State income taxes; provided, however, that the award of attorney's fees shall be
24 subject to taxation; or

25 (3) Offset by any expense incurred by the state or any political subdivision thereof for
26 expenses related to the claimant's incarceration.

27 (b) No resolution for the payment of compensation under this part shall be adopted unless
28 notice of claim has been filed with the board within three years after the date that the
29 claimant's innocence has been established as set forth in Code Section 28-5-111, or within
30 three years of July 1, 2005, whichever occurs last.

31 (c) The board shall prepare and transmit to the General Assembly, along with its
32 recommendation on each claim, a report of its activities in connection therewith, including
33 the name of the claimant, a brief description of the facts surrounding the claim, the amount
34 of compensation recommended, and the board's reasons therefor.

1 28-5-116.

2 (a) Any claimant who receives compensation under this part may not bring any action
3 involving the same subject matter, including an action involving the claimant's arrest,
4 conviction, or length of confinement, against the state.

5 (b) This Code section does not affect any liability of the state or of its employees to a
6 claimant's cause of action that is not based on the wrongful conviction, including, but not
7 limited to, a cause of action that arises out of circumstances occurring during the claimant's
8 confinement.

9 28-5-117.

10 Not later than January 1 of each year, the board shall provide the Governor, the Lieutenant
11 Governor, and the Chairpersons of the Appropriations Committees in the House of
12 Representatives and Senate with a list of claimants entitled to payment under this part and
13 the amounts due to each claimant.

14 28-5-118.

15 (a) A court granting judicial relief as contemplated by Code Section 28-5-111, on or after
16 July 1, 2005, shall provide a copy of this part to the individual seeking such relief. The
17 individual shall be required to acknowledge receipt of a copy of this part in writing on a
18 form established by the Administrative Office of the Courts. Such acknowledgment shall
19 be entered on the docket by the court and shall be admissible in any proceeding filed by a
20 claimant under this part.

21 (b) The State Board of Pardons and Paroles, upon the issuance of a pardon as contemplated
22 by Code Section 28-5-111, on or after July 1, 2005, shall provide a copy of this part to the
23 individual seeking such relief. The individual shall be required to acknowledge receipt of
24 a copy of this part in writing on a form established by the parole board, which shall be
25 retained on file by the parole board as part of its official records and shall be admissible in
26 any proceeding filed by a claimant under this part."

27 **SECTION 3.**

28 All laws and parts of laws in conflict with this Act are repealed.