

SENATE BILL No. 336

By Committee on Judiciary

1-29

1 AN ACT concerning civil actions; relating to wrongful conviction and
2 imprisonment; compensation; amending K.S.A. 2017 Supp. 75-6117
3 and repealing the existing section.

4 WHEREAS, The Legislature intends by enactment of the provisions of
5 this act that those innocent persons who can demonstrate by a
6 preponderance of evidence that they were mistakenly convicted and
7 imprisoned be able to recover damages against the State; and

8 WHEREAS, The Legislature finds and declares that innocent persons
9 who have been convicted of crimes and subsequently imprisoned have
10 been frustrated in seeking legal redress and that such persons should have
11 an available avenue of redress to seek compensation for damages.

12 Now, therefore:

13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) As used in this section, "claimant" means a person
15 convicted and subsequently imprisoned for one or more crimes that such
16 person did not commit.

17 (b) Notwithstanding the provisions of any other law, a claimant may
18 bring an action in the district court seeking damages from the state
19 pursuant to this section.

20 (c) (1) The claimant shall establish the following by a preponderance
21 of evidence:

22 (A) The claimant was convicted of a felony crime and subsequently
23 imprisoned;

24 (B) the claimant's judgment of conviction was reversed or vacated
25 and either the charges were dismissed or on retrial the claimant was found
26 to be not guilty;

27 (C) the claimant did not commit the crime or crimes for which the
28 claimant was convicted and was not an accessory or accomplice to the acts
29 that were the basis of the conviction and resulted in a reversal or vacation
30 of the judgment of conviction, dismissal of the charges or finding of not
31 guilty on retrial; and

32 (D) the claimant did not commit or suborn perjury, fabricate
33 evidence, or by the claimant's own conduct cause or bring about the
34 conviction. Neither a confession nor admission later found to be false or a
35 guilty plea shall constitute committing or suborning perjury, fabricating
36 evidence or causing or bringing about the conviction under this subsection.

1 (2) The court, in exercising its discretion as permitted by law
2 regarding the weight and admissibility of evidence submitted pursuant to
3 this section, may, in the interest of justice, give due consideration to
4 difficulties of proof caused by the passage of time, the death or
5 unavailability of witnesses, the destruction of evidence or other factors not
6 caused by such persons or those acting on their behalf.

7 (d) (1) The suit, accompanied by a statement of the facts concerning
8 the claim for damages, verified in the manner provided for the verification
9 of complaints in the rules of civil procedure, shall be brought by the
10 claimant within a period of two years after the: (A) Dismissal of the
11 criminal charges against the claimant or finding of not guilty on retrial; or
12 (B) grant of a pardon to the claimant.

13 (2) A claimant convicted, imprisoned and released from custody
14 before July 1, 2018, must commence an action under this section no later
15 than July 1, 2020.

16 (e) (1) Damages awarded under this section shall be:

17 (A) \$80,000 for each year of imprisonment, except as provided in
18 subsection (d)(2); and

19 (B) not less than \$25,000 for each additional year served on parole or
20 postrelease supervision or each additional year the claimant was required
21 to register as an offender under the Kansas offender registration act,
22 whichever is greater.

23 (2) A claimant shall not receive compensation for any period of
24 incarceration during which the claimant was concurrently serving a
25 sentence for a conviction of another crime for which such claimant was
26 lawfully incarcerated.

27 (3) The court shall order that the award be paid either in one lump
28 sum or as a combination of an initial payment determined by the court
29 with the remainder paid as an annuity. The court shall consider the best
30 interests of the claimant in making such determination.

31 (4) In addition to the damages awarded pursuant to subsection (e)(1),
32 the claimant:

33 (A) Shall be entitled to receive reasonable attorney fees and costs
34 related to the litigation; and

35 (B) may also be awarded other non-monetary relief as sought in the
36 complaint including, but not limited to, vocational training, tuition
37 assistance, counseling, housing assistance and health insurance coverage,
38 as appropriate.

39 (5) Damages awarded under this section shall not be subject to
40 treatment as gross income to the claimant.

41 (f) (1) If, at the time of the judgment entry referred to in subsection
42 (e), the claimant has won a monetary award against the state or any
43 political subdivision thereof in a civil action related to the same subject,

1 the amount of the award in the action, less any sums paid to attorneys or
2 for costs in litigating the other civil action, shall be deducted from the sum
3 of money to which the claimant is entitled under this section. The court
4 shall include in the judgment entry an award to the state of any amount
5 deducted pursuant to this subsection.

6 (2) If subsection (f)(1) does not apply and if, after the time of the
7 judgment entry referred to in subsection (e), the claimant wins a monetary
8 award against the state or any political subdivision thereof in a civil action
9 related to the same subject, the claimant shall reimburse the state for the
10 sum of money paid under the judgment entry referred to in subsection (e).
11 A reimbursement required under this subsection shall not exceed the
12 amount of the monetary award the claimant wins for damages in the other
13 civil action.

14 (g) If the court finds that the claimant is entitled to a judgment, it
15 shall enter a certificate of innocence finding that the claimant was innocent
16 of all crimes for which the claimant was mistakenly convicted. The clerk
17 of the court shall send a certified copy of the certificate of innocence and
18 the judgment entry to the attorney general for payment pursuant to K.S.A.
19 75-6117, and amendments thereto.

20 (h) (1) Upon entry of a certificate of innocence, the court shall order
21 the associated convictions and arrest records expunged and purged from all
22 applicable state and federal systems pursuant to this subsection. The court
23 shall enter the expungement order regardless of whether the claimant has
24 prior criminal convictions.

25 (2) The order of expungement shall state the:

26 (A) Claimant's full name;

27 (B) claimant's full name at the time of arrest and conviction, if
28 different than the claimant's current name;

29 (C) claimant's sex, race and date of birth;

30 (D) crime for which the claimant was arrested and convicted;

31 (E) date of the claimant's arrest and date of the claimant's conviction;

32 and

33 (F) identity of the arresting law enforcement authority and identity of
34 the convicting court.

35 (3) The order of expungement shall also direct the Kansas bureau of
36 investigation to purge the conviction and arrest information from the
37 criminal justice information system central repository and all applicable
38 state and federal databases. The clerk of the court shall send a certified
39 copy of the order to the Kansas bureau of investigation, which shall carry
40 out the order and shall notify the federal bureau of investigation, the
41 secretary of corrections and any other criminal justice agency that may
42 have a record of the conviction and arrest.

43 (4) If a certificate of innocence and an order of expungement are

1 entered pursuant to this section, the claimant shall be treated as not having
2 been arrested or convicted of the crime.

3 (i) The decision to grant or deny a certificate of innocence shall not
4 have a res judicata effect on any other proceedings.

5 Sec. 2. K.S.A. 2017 Supp. 75-6117 is hereby amended to read as
6 follows: 75-6117. (a) There is hereby established in the state treasury the
7 tort claims fund which shall be administered by the attorney general. All
8 expenditures from such fund shall be made upon warrants of the director
9 of accounts and reports pursuant to vouchers approved by the attorney
10 general or by a designee of the attorney general.

11 (b) (1) Moneys in the tort claims fund shall be used only for the
12 purpose of paying—~~(1):~~ (A) Compromises, settlements and final judgments
13 arising from claims against the state or an employee of the state under the
14 Kansas tort claims act or under the civil rights laws of the United States or
15 of the state of Kansas—~~and (2):~~ (B) costs of defending the state or an
16 employee of the state in any actions or proceedings on those claims; *and*
17 (C) *judgments arising from claims pursuant to section 1, and amendments*
18 *thereto.*

19 (2) Payment of a compromise or settlement shall be subject to
20 approval by the state finance council as provided in K.S.A. 75-6106, and
21 amendments thereto. Payment of a final judgment shall be made from the
22 fund if there has been a determination of any appeal taken from the
23 judgment or, if no appeal is taken, if the time for appeal has expired. No
24 payment shall be made from the fund to satisfy a compromise, settlement
25 or final judgment when there exists insurance coverage obtained therefor,
26 except that payment shall be made from the fund to satisfy a compromise
27 settlement or final judgment for claims against the state or an employee of
28 the state in any actions or proceedings arising from rendering or failure to
29 render professional services by: (A) A charitable health care provider as
30 defined by K.S.A. 75-6102, and amendments thereto; (B) a local health
31 department as defined by K.S.A. 65-241, and amendments thereto, or an
32 employee thereof; or (C) an indigent health care clinic as defined by
33 K.S.A. 75-6115, and amendments thereto, or an employee thereof, even if
34 there exists insurance coverage obtained therefor.

35 (c) Upon certification by the attorney general to the director of
36 accounts and reports that the unencumbered balance in the tort claims fund
37 is insufficient to pay an amount for which the fund is liable, the director of
38 accounts and reports shall transfer an amount equal to the insufficiency
39 from the state general fund to the tort claims fund.

40 (d) When payment is made from the Kansas tort claims fund on
41 behalf of the university of Kansas hospital authority, the authority shall
42 transfer to the tort claims fund an amount equal to the payment made by
43 the tort claims fund on behalf of the authority.

1 (e) This section shall be part of and supplemental to the Kansas tort
2 claims act.

3 Sec. 3. K.S.A. 2017 Supp. 75-6117 is hereby repealed.

4 Sec. 4. This act shall take effect and be in force from and after its
5 publication in the statute book.