

House Bill 172

By: Representatives Hugley of the 136<sup>th</sup>, Stephens of the 165<sup>th</sup>, Beverly of the 143<sup>rd</sup>, Stephenson of the 90<sup>th</sup>, Gordon of the 163<sup>rd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 4 of Chapter 5 of Title 28 and Code Section 35-3-37 of the Official Code  
2 of Georgia Annotated, relating to the Claims Advisory Board and review of individual's  
3 criminal history record information, definitions, privacy considerations, and inspections,  
4 respectively, so as to provide for compensation of persons wrongfully convicted and  
5 imprisoned; to provide for legislative findings; to provide for a definition; to provide for  
6 applicability; to provide for a short title; to provide for recommendations by the board as to  
7 payment of compensation; to provide for eligibility for compensation by a claimant; to  
8 provide for procedural rules; to provide for claims for compensation; to provide for standards  
9 for compensation; to provide for limitations of claims; to provide for exceptions; to provide  
10 for reports on claims being transmitted to the executive and legislative branch; to provide for  
11 record restriction; to provide for related matters; to repeal conflicting laws; and for other  
12 purposes.

13 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

14 **SECTION 1.**

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

20 **SECTION 2.**

21 Article 4 of Chapter 5 of Title 28 of the Official Code of Georgia Annotated, relating to the  
22 Claims Advisory Board, is amended by revising Code Section 28-5-60, relating to the  
23 creation, membership, and representation of members by deputies or other designated  
24 employees, as follows:

25 "28-5-60.

26 (a) As used in this article, the term:

27 (1) 'Board' means the Claims Advisory Board.

28 (2) 'The state or any of its departments or agencies' includes any department, agency,  
 29 bureau, or commission of state government but does not include state authorities or any  
 30 county or municipal department, agency, bureau, commission, or authority.

31 ~~(a)(b)~~ There is created the Claims Advisory Board, hereinafter called the board, to which  
 32 shall be composed of the Secretary of State, who shall be the ~~chairman, chairperson;~~ the  
 33 commissioner of human services; the commissioner of corrections; and the commissioner  
 34 of transportation. Whenever the board takes any official action authorized under the law  
 35 or by duly promulgated rules and regulations, three of the members shall constitute a  
 36 quorum; however, any of those individuals named above may be represented by a deputy  
 37 or other designated employee; and any such action shall be valid if any two of the  
 38 remaining three individuals members are present during such action. Any board member  
 39 may be represented by a deputy or other designated employee, and such individual's actions  
 40 shall have the same effect as a board member's actions.

41 ~~(b)(c)~~ The ~~Claims Advisory Board is~~ board shall be assigned to the Secretary of State for  
 42 administrative purposes only as prescribed in Code Section 50-4-3."

43 **SECTION 3.**

44 Said article is further amended by repealing in its entirety Code Section 28-5-60.1, relating  
 45 to "the state or any of its departments or agencies" defined.

46 **SECTION 4.**

47 Said article is further amended by adding a new Code section to Part 2, relating to claims  
 48 against the state or departments or agencies, to read as follows:

49 "28-5-87.

50 The provisions of this part shall not apply to a claim against the state or any of its  
 51 departments or agencies that may be made pursuant to Part 4 of this article."

52 **SECTION 5.**

53 Said article is further amended by adding a new part to read as follows:

54 "Part 4

55 28-5-110.

56 This part shall be known and may be cited as the 'Innocent Persons' Compensation Act.'

57 28-5-111.

58 The Claims Advisory Board shall have authority to consider and make recommendations  
59 to the General Assembly concerning payment of compensation to any individual who has  
60 been convicted of and imprisoned for one or more crimes which he or she did not commit.  
61 The board may appoint a special master to take testimony, supervise or conduct necessary  
62 investigations, and report to the board, but the ultimate recommendation on any claim to  
63 the General Assembly shall be made only by the board.

64 28-5-112.

65 In order to be eligible for compensation under this part, the claimant shall establish beyond  
66 a reasonable doubt to the board that:

- 67 (1) The claimant was convicted of one or more crimes and was sentenced to a term of  
68 imprisonment;  
69 (2) The claimant has served all or part of the sentence of imprisonment;  
70 (3) The claimant proclaims his or her innocence of all crimes; and  
71 (4) The claimant's wrongful conviction has been established by verifiable and substantial  
72 evidence of his or her innocence.

73 28-5-113.

74 (a) No claim for the payment of compensation under this part shall be considered by the  
75 board unless a notice of claim has been filed with the board within three years after the date  
76 the claimant's eligibility has been established as set forth in Code Section 28-5-112 or  
77 within three years of July 1, 2019, whichever occurs later.

78 (b) The board shall provide forms to be used in filing a notice of claim and shall make  
79 them available for such purpose. When a notice of claim is filed, the board shall inform  
80 the individual filing the notice, in writing, of the information it will require in order to take  
81 action on the claim. Such information shall include documentation supporting the  
82 claimant's eligibility for compensation. The board may request that the claimant submit  
83 any other supporting information that it deems necessary.

84 (c) Once a claimant has submitted a notice of claim and any information deemed necessary  
85 by the board, the chairperson, after consultation with the other members of the board, shall  
86 set a time for acting on the claim and shall set a date for a hearing. The claimant, the  
87 district attorney for the circuit in which the conviction occurred, and the Attorney General  
88 shall be notified of the date, time, and place of the hearing and may present evidence at  
89 such hearing. Such other persons as the board deems necessary shall likewise be notified  
90 and allowed to present evidence.

91 (d) Proceedings before the board shall be governed by rules established by the board, and  
92 such rules shall emphasize, to the greatest extent possible, the informality of proceedings.  
93 A claimant shall not be required to be represented or accompanied by an attorney.

94 28-5-114.

95 (a) In making its recommendation to the General Assembly, the board shall:

96 (1) Formulate standards for uniform application in recommending compensation;

97 (2) If the claimant was imprisoned for four years or less, include \$50,000.00 per year for  
98 each year of imprisonment; such compensation shall be payable in a lump sum award;

99 (3) If the claimant was imprisoned for more than four years, include \$50,000.00 per year  
100 for each year of imprisonment; such compensation shall be payable in an initial lump sum  
101 of at least \$50,000.00, with the remaining balance to be paid in the form of an annuity  
102 contract funded by the board on behalf of the claimant, provided that:

103 (A) Such annuity contract shall be secured from an insurance company that is licensed  
104 under the laws of this state and whose claims-paying ability is rated as superior or  
105 excellent by at least two nationally recognized rating services; and

106 (B) Such annuity contract, by its terms, cannot be sold, transferred, assigned,  
107 discounted, or used as security for a loan;

108 (4) If requested by the claimant, provide a tuition voucher for up to 120 hours and any  
109 ancillary student fees for any undergraduate program of any Georgia public  
110 postsecondary institution, including all four-year and two-year colleges and universities  
111 and institutions of the University System of Georgia and the Technical College System  
112 of Georgia; provided, however, that this voucher shall not be construed to guarantee  
113 acceptance of the claimant into any such public postsecondary institution, nor shall it  
114 prohibit the claimant from participating in any other program of financial assistance for  
115 postsecondary education. The board shall coordinate with the Board of Regents of the  
116 University System of Georgia and the State Board of the Technical College System of  
117 Georgia to develop the form of the voucher; and

118 (5) Include reasonable attorney's fees and other expenses incurred by the claimant in  
119 connection with all associated criminal proceedings and appeals and, if applicable, in  
120 connection with obtaining the claimant's discharge from confinement.

121 (b) In calculating time of imprisonment, the board shall include any time a claimant spent  
122 in custody awaiting trial, during trial, and after conviction; provided, however, that a  
123 claimant shall not be entitled to compensation under this part for any portion of a sentence  
124 spent incarcerated during which the claimant was also serving a concurrent sentence for  
125 another crime committed in this state or in any other jurisdiction to which this part does not  
126 apply. A pro rata amount for any portion of each year of imprisonment shall be awarded.

127 (c) In making its recommendation to the General Assembly, the board may recommend  
128 payment of compensation:

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

130 (2) In the case of death of the claimant, to or for the benefit of any one or more of the  
131 heirs at law of the claimant who, at the time of the claimant's death, were dependent upon  
132 the claimant for more than one-half of their support.

133 (d) The board shall prepare a statement including its findings, its determination of the  
134 merits of the claim, its recommendation as to the payment of the claim, and such other  
135 information as the board deems advisable and shall transmit such statement to the  
136 chairperson of the House Committee on Appropriations. The chairperson shall present  
137 such information to the full committee if a resolution seeking compensation is filed. The  
138 board's recommendation shall be advisory only. The General Assembly shall act on such  
139 recommendation in accordance with the law and the rules of the House of Representatives  
140 and Senate for adopting compensation resolutions.

141 (e) When a notice of claim is filed on or before the fifteenth day of October, the board  
142 shall make its recommendation on such claim on or before the fifth day of the subsequent  
143 year's legislative session. If the notice of claim is filed after the fifteenth day of October,  
144 the board shall make its recommendation on or before the thirty-first day of December of  
145 the following year.

146 28-5-115.

147 (a) The General Assembly may, by resolution, appropriate money for payment of a claim  
148 for compensation upon the recommendation of the board.

149 (b) Any resolution relating to a claim made pursuant to this part must be introduced in the  
150 House of Representatives on or before the tenth day of any regular session. Such  
151 resolution shall not be filed until the board has made a recommendation on a claim. If the  
152 board's recommendation occurs subsequent to the fifth day of a regular session, a resolution  
153 shall be filed at the next regular session.

154 (c) Any resolution filed pursuant to this part shall be referred by the Speaker of the House  
155 to the House Committee on Appropriations.

156 (d) Any award of compensation made by the General Assembly shall not be:

157 (1) Subject to state income taxes; provided, however, that the award of attorney's fees  
158 shall be subject to taxation; or

159 (2) Offset by any expense incurred by this state or any political subdivision thereof for  
160 expenses related to the claimant's incarceration.

161 (e) The General Assembly waives the sovereign immunity of this state for the purpose of  
162 authorizing the payment of claims against this state pursuant to the authority of this part.

163 28-5-116.

164 Not later than January 5 of each year, the board shall prepare and transmit to the Governor,  
 165 the Lieutenant Governor, the Speaker of the House of Representatives, the chairperson of  
 166 the Senate Appropriations Committee, and the chairperson of the House Committee on  
 167 Appropriations a report including the name of each claimant with a claim pending pursuant  
 168 to this part, a brief description of the facts surrounding such claim, the amount of  
 169 compensation recommended, and the board's reasons for its recommendation.

170 28-5-117.

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

174 (b) This part shall not affect any liability of this state or of its employees to a claimant's  
 175 cause of action that is not based on the wrongful conviction, including, but not limited to,  
 176 a cause of action that arises out of circumstances occurring during the claimant's  
 177 incarceration."

178 **SECTION 6.**

179 Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of  
 180 individual's criminal history record information, definitions, privacy considerations, and  
 181 inspections, by revising subparagraph (h)(2)(A) as follows:

182 "(A) Except as provided in subsection (i) of this Code section, all charges were  
 183 dismissed or nolle prossed, including offenses occurring before July 1, 2013;"

184

185 **SECTION 7.**

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