

SENATE BILL No. 336

By Committee on Judiciary

1-29

1 AN ACT concerning civil actions; relating to wrongful conviction and
2 imprisonment; compensation; **tuition assistance; state health care**
3 **benefits program;** amending K.S.A. 2017 Supp. 75-6117 **and 75-6501**
4 and repealing the existing ~~section~~ **sections.**

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

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

13 Now, therefore:

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

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

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

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

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

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

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

33 (D) the claimant did not commit or suborn perjury, fabricate
34 evidence, or by the claimant's own conduct cause or bring about the

1 conviction. Neither a confession nor admission later found to be false or a
2 guilty plea shall constitute committing or suborning perjury, fabricating
3 evidence or causing or bringing about the conviction under this subsection.

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

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

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

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

20 (A) ~~\$80,000~~ **\$50,000** for each year of imprisonment, except as
21 provided in subsection ~~(d)~~ **(e)**(2); and

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

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

30 ~~(3) The court shall order that the award be paid either in one lump~~
31 ~~sum or as a combination of an initial payment determined by the court~~
32 ~~with the remainder paid as an annuity. The court shall consider the best~~
33 ~~interests of the claimant in making such determination~~ **(A) Except as**
34 **provided in subparagraph (B), the court shall order that the award be**
35 **paid as a combination of an initial payment not to exceed \$100,000 and**
36 **the remainder as an annuity not to exceed \$80,000 per year. The**
37 **claimant shall designate a beneficiary or beneficiaries for the annuity by**
38 **filing such designation with the court.**

39 **(B) The court may order that the award be paid in one lump sum if**
40 **the court finds that it is in the best interests of the claimant.**

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

43 (A) Shall be entitled to receive reasonable attorney fees and costs

1 ~~related to the litigation~~ ***incurred in the action brought pursuant to this***
2 ***section; and***

3 (B) may also be awarded other non-monetary relief as sought in the
4 complaint including, but not limited to, ~~vocational training, tuition~~
5 ~~assistance, counseling, housing assistance and health insurance coverage~~
6 ***personal finance literacy assistance***, as appropriate;

7 ***(C) shall be entitled to receive tuition assistance pursuant to section***
8 ***2, and amendments thereto; and***

9 ***(D) shall be entitled to participate in the state health care benefits***
10 ***program pursuant to K.S.A. 75-6501, and amendments thereto.***

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

13 (f) (1) If, at the time of the judgment entry referred to in subsection
14 (e), the claimant has won a monetary award against the state or any
15 political subdivision thereof in a civil action related to the same subject, ***or***
16 ***has entered into a settlement agreement with the state or any political***
17 ***subdivision thereof related to the same subject***, the amount of the award
18 in the action ***or the amount received in the settlement agreement***, less any
19 sums paid to attorneys or for costs in litigating the other civil action ***or***
20 ***obtaining the settlement agreement***, shall be deducted from the sum of
21 money to which the claimant is entitled under this section. The court shall
22 include in the judgment entry an award to the state of any amount
23 deducted pursuant to this subsection.

24 (2) If subsection (f)(1) does not apply and if, after the time of the
25 judgment entry referred to in subsection (e), the claimant wins a monetary
26 award against the state or any political subdivision thereof in a civil action
27 related to the same subject, ***or enters into a settlement agreement with the***
28 ***state or any political subdivision thereof related to the same subject***, the
29 claimant shall reimburse the state for the sum of money paid under the
30 judgment entry referred to in subsection (e), ***less any sums paid to***
31 ***attorneys or for costs in litigating the other civil action or obtaining the***
32 ***settlement agreement***. A reimbursement required under this subsection
33 shall not exceed the amount of the monetary award the claimant wins for
34 damages in the other civil action ***or the amount received in the settlement***
35 ***agreement***.

36 ***(3) Whenever any judgment has been entered pursuant to this***
37 ***section, the attorney general shall seek to recover damages for the state***
38 ***of Kansas, for the benefit of the state general fund, from any persons***
39 ***who {knowingly} contributed to the wrongful conviction and***
40 ***imprisonment of the claimant, to the extent the evidence in the case***
41 ***warrants such action. The attorney general shall also prosecute ouster***
42 ***and criminal proceedings as the evidence in the case warrants.***

43 (g) If the court finds that the claimant is entitled to a judgment, it

1 shall enter a certificate of innocence finding that the claimant was innocent
2 of all crimes for which the claimant was mistakenly convicted. The clerk
3 of the court shall send a certified copy of the certificate of innocence and
4 the judgment entry to the attorney general for payment pursuant to K.S.A.
5 75-6117, and amendments thereto.

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

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

12 (A) Claimant's full name;

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

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

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

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

19 (F) identity of the arresting law enforcement authority and identity of
20 the convicting court.

21 (3) The order of expungement shall also direct the Kansas bureau of
22 investigation to purge the conviction and arrest information from the
23 criminal justice information system central repository and all applicable
24 state and federal databases. The clerk of the court shall send a certified
25 copy of the order to the Kansas bureau of investigation, which shall carry
26 out the order and shall notify the federal bureau of investigation, the
27 secretary of corrections and any other criminal justice agency that may
28 have a record of the conviction and arrest. ***The Kansas bureau of
29 investigation shall provide confirmation of such action to the court.***

30 (4) If a certificate of innocence and an order of expungement are
31 entered pursuant to this section, the claimant shall be treated as not having
32 been arrested or convicted of the crime.

33 (i) ***Upon entry of a certificate of innocence, the court shall order
34 the expungement and destruction of the associated biological samples
35 authorized by and given to the Kansas bureau of investigation in
36 accordance with K.S.A. 21-2511, and amendments thereto. The order
37 shall state the information required to be stated in a petition to expunge
38 and destroy the samples and profile record pursuant to K.S.A. 21-2511,
39 and amendments thereto, and shall direct the Kansas bureau of
40 investigation to expunge and destroy such samples and profile record.
41 The clerk of the court shall send a certified copy of the order to the
42 Kansas bureau of investigation, which shall carry out the order and
43 provide confirmation of such action to the court. {Nothing in this***

1 *subsection shall require the Kansas bureau of investigation to expunge*
2 *and destroy any samples or profile record associated with the claimant*
3 *that was submitted pursuant to K.S.A. 21-2511(a), and amendments*
4 *thereto, related to any offense other than the offense for which the court*
5 *has entered a certificate of innocence.}*

6 (j) The decision to grant or deny a certificate of innocence shall not
7 have a res judicata effect on any other proceedings.

8 (k) *Nothing in this section shall preclude the department of*
9 *corrections from providing reentry services to a claimant that are*
10 *provided to other persons, including, but not limited to, financial*
11 *assistance, housing assistance, mentoring and counseling. Such services*
12 *shall be provided while an action under this section is pending and after*
13 *any judgment is entered, as appropriate for such claimant.*

14 *New Sec. 2. (a) Any individual awarded tuition assistance pursuant*
15 *to section 1, and amendments thereto, shall receive a waiver of tuition*
16 *and required fees for attendance at a postsecondary educational*
17 *institution for up to 130 credit hours. Such individual may attend a*
18 *postsecondary educational institution either full or part time.*

19 (b) (1) *Subject to appropriations, the state board of regents may*
20 *make expenditures to reimburse each individual awarded tuition*
21 *assistance pursuant to section 1, and amendments thereto, who is*
22 *enrolled in a postsecondary educational institution for additional fees,*
23 *including, but not limited to, fees for room and board, technical*
24 *equipment and course-required books.*

25 (2) *No postsecondary educational institution shall delay enrollment*
26 *of an individual who is awarded tuition assistance pursuant to section 1,*
27 *and amendments thereto, because appropriations are not available for*
28 *any additional fees provided to such individual.*

29 (c) *To remain eligible for the tuition and fees waiver under this*
30 *section, an individual shall remain in good standing at the*
31 *postsecondary educational institution where the individual is enrolled.*

32 (d) *Individuals shall provide a written or electronic copy of the*
33 *court order awarding relief in the form of tuition assistance to the*
34 *postsecondary educational institution or the state board of regents.*

35 (e) *The state board of regents shall adopt rules and regulations to*
36 *administer the provisions of this section.*

37 (f) *As used in this section, "postsecondary educational institution"*
38 *means any state educational institution as defined in K.S.A. 76-711, and*
39 *amendments thereto, municipal university, community college, technical*
40 *college or institute of technology in Kansas.*

41 ~~Sec. 3.~~ *3. K.S.A. 2017 Supp. 75-6117 is hereby amended to read as*
42 *follows: 75-6117. (a) There is hereby established in the state treasury the*
43 *tort claims fund which shall be administered by the attorney general. All*

1 expenditures from such fund shall be made upon warrants of the director
2 of accounts and reports pursuant to vouchers approved by the attorney
3 general or by a designee of the attorney general.

4 (b) (1) Moneys in the tort claims fund shall be used only for the
5 purpose of paying—~~(1)~~: (A) Compromises, settlements and final judgments
6 arising from claims against the state or an employee of the state under the
7 Kansas tort claims act or under the civil rights laws of the United States or
8 of the state of Kansas—~~and (2)~~; (B) costs of defending the state or an
9 employee of the state in any actions or proceedings on those claims; *and*
10 (C) *judgments arising from claims pursuant to section 1, and amendments*
11 *thereto, including, but not limited to, premiums under the state health*
12 *care benefits program.*

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

29 (c) Upon certification by the attorney general to the director of
30 accounts and reports that the unencumbered balance in the tort claims fund
31 is insufficient to pay an amount for which the fund is liable, the director of
32 accounts and reports shall transfer an amount equal to the insufficiency
33 from the state general fund to the tort claims fund.

34 (d) When payment is made from the Kansas tort claims fund on
35 behalf of the university of Kansas hospital authority, the authority shall
36 transfer to the tort claims fund an amount equal to the payment made by
37 the tort claims fund on behalf of the authority.

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

40 ***Sec. 4. K.S.A. 2017 Supp. 75-6501 is hereby amended to read as***
41 ***follows: 75-6501. (a) Within the limits of appropriations made or***
42 ***available therefor and subject to the provisions of appropriation acts***
43 ***relating thereto, the Kansas state employees health care commission***

1 *shall develop and provide for the implementation and administration of*
2 *a state health care benefits program.*

3 *(b) (1) Subject to the provisions of paragraph (2), the state health*
4 *care benefits program may provide benefits for persons qualified to*
5 *participate in the program for hospitalization, medical services, surgical*
6 *services, nonmedical remedial care and treatment rendered in*
7 *accordance with a religious method of healing and other health services.*
8 *The program may include such provisions as are established by the*
9 *Kansas state employees health care commission, including, but not*
10 *limited to, qualifications for benefits, services covered, schedules and*
11 *graduation of benefits, conversion privileges, deductible amounts,*
12 *limitations on eligibility for benefits by reason of termination of*
13 *employment or other change of status, leaves of absence, military service*
14 *or other interruptions in service and other reasonable provisions as may*
15 *be established by the commission.*

16 *(2) The state health care benefits program shall provide the benefits*
17 *and services required by K.S.A. 2017 Supp. 75-6524, and amendments*
18 *thereto.*

19 *(c) The Kansas state employees health care commission shall*
20 *designate by rules and regulations those persons who are qualified to*
21 *participate in the state health care benefits program, including active*
22 *and retired public officers and employees and their dependents as*
23 *defined by rules and regulations of the commission. Such rules and*
24 *regulations shall not apply to students attending a state educational*
25 *institution as defined in K.S.A. 76-711, and amendments thereto, who*
26 *are covered by insurance contracts entered into by the board of regents*
27 *pursuant to K.S.A. 75-4101, and amendments thereto. In designating*
28 *persons qualified to participate in the state health care benefits program,*
29 *the commission may establish such conditions, restrictions, limitations*
30 *and exclusions as the commission deems reasonable. Such conditions,*
31 *restrictions, limitations and exclusions shall include the conditions*
32 *contained in ~~subsection (d) of~~ K.S.A. 75-6506(d), and amendments*
33 *thereto. Each person who was formerly elected or appointed and*
34 *qualified to an elective state office and who was covered immediately*
35 *preceding the date such person ceased to hold such office by the*
36 *provisions of group health insurance or a health maintenance*
37 *organization plan under the law in effect prior to August 1, 1984, or the*
38 *state health care benefits program in effect after that date, shall*
39 *continue to be qualified to participate in the state health care benefits*
40 *program and shall pay the cost of participation in the program as*
41 *established and in accordance with the procedures prescribed by the*
42 *commission if such person chooses to participate therein.*

43 *(d) (1) Commencing with the 2009 plan year that begins January 1,*

1 *2009, if a state employee elects the high deductible health plan and*
2 *health savings account, the state's employer contribution shall equal the*
3 *state's contribution to any other health benefit plan offered by the state.*
4 *The cost savings to the state for the high deductible health plan shall be*
5 *deposited monthly into the employee's health savings account up to the*
6 *maximum annual amount allowed pursuant to ~~subsection (d)~~ of 26*
7 *U.S.C. § 223(d), as amended, for as long as the employee participates in*
8 *the high deductible plan.*

9 *(2) If the employee had not previously participated in the state*
10 *health benefits plan, the employer shall calculate the average savings to*
11 *the employer of the high deductible plan compared to the other available*
12 *plans and contribute that amount monthly to the employee's health*
13 *savings account up to the maximum annual amount allowed pursuant to*
14 *~~subsection (d)~~ of 26 U.S.C. § 223(d), as amended.*

15 *(3) The employer shall allow additional voluntary contributions by*
16 *the employee to their health savings account by payroll deduction up to*
17 *the maximum annual amount allowed pursuant to ~~subsection (d)~~ of 26*
18 *U.S.C. § 223(d), as amended.*

19 *(e) The commission shall have no authority to assess charges for*
20 *employer contributions under the student health care benefits*
21 *component of the state health care benefits program for persons who are*
22 *covered by insurance contracts entered into by the board of regents*
23 *pursuant to K.S.A. 75-4101, and amendments thereto.*

24 *(f) Nothing in this act shall be construed to permit the Kansas state*
25 *employees health care commission to discontinue the student health care*
26 *benefits component of the state health care benefits program until the*
27 *state board of regents has contracts in effect that provide student*
28 *coverage pursuant to the authority granted therefor in K.S.A. 75-4101,*
29 *and amendments thereto.*

30 *(g) (1) On and after July 1, 2018, the commission shall designate*
31 *claimants, as defined in section 1, and amendments thereto, as qualified to*
32 *participate in the state health care benefits program. The commission*
33 *shall implement this subsection in accordance with applicable federal law,*
34 *including, but not limited to, the employee retirement income security act*
35 *of 1974 and any regulations issued by the United States department of the*
36 *treasury.*

37 *(2) A claimant shall have 31 calendar days from the date of judgment*
38 *entered pursuant to section 1, and amendments thereto, to complete or*
39 *decline enrollment in the state health care benefits program. A claimant*
40 *shall be qualified to participate in the state health care benefits program*
41 *for the remainder of the plan year when judgment is entered pursuant to*
42 *section 1, and amendments thereto, and for the next ensuing plan year. A*
43 *claimant shall not be qualified to elect a high-deductible health plan and*

1 *health savings account under the state health care benefits program.*

2 (3) *Costs of premiums under the state health care benefits program*
3 *for a claimant shall be paid from the tort claims fund established by K.S.A.*
4 *75-6117, and amendments thereto, and shall not be charged to the*
5 *claimant. A claimant shall be responsible to pay any applicable*
6 *copayments, deductibles and other related costs under the state health*
7 *care benefits program.*

8 (4) *A claimant may elect to include the claimant's dependents under*
9 *the state health care benefits program. For any covered dependents, the*
10 *claimant shall be responsible to pay the costs of premiums, copayments,*
11 *deductibles and other related costs under the state health care benefits*
12 *program.*

13 (5) *The attorney general shall provide assistance to a claimant to*
14 *obtain and maintain coverage under the state health care benefits*
15 *program pursuant to this subsection, including: Enrollment; maintenance*
16 *of related records; and other assistance as may be required or incidental*
17 *to implement this subsection.*

18 ~~Sec.-3: 5.~~ K.S.A. 2017 Supp. 75-6117 ~~is~~ **and 75-6501 are** hereby
19 repealed.

20 ~~Sec.-4: 6.~~ This act shall take effect and be in force from and after its
21 publication in the statute book.