

HOUSE BILL NO. HB0040

Compensation for persons exonerated based on DNA.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to criminal procedure; authorizing
2 compensation for persons exonerated based on DNA testing;
3 specifying conditions, requirements and limitations on
4 authorized compensation; conforming provisions; and
5 providing for an effective date.

6

7 *Be It Enacted by the Legislature of the State of Wyoming:*

8

9 **Section 1.** W.S. 7-12-316 is created to read:

10

11 **7-12-316. Compensation.**

12

13 (a) A movant is eligible for compensation as provided
14 in this section if:

15

1 (i) The court entered an order of actual
2 innocence and exoneration pursuant to W.S. 7-12-310(c) or
3 (d);

4
5 (ii) The movant has served in whole or in part a
6 sentence of imprisonment for the conviction for which the
7 order of actual innocence and exoneration was entered; and

8
9 (iii) At the time of entry of the order of
10 actual innocence and exoneration, the movant was not
11 serving and had not been ordered to serve a concurrent or
12 consecutive sentence of imprisonment for a separate
13 conviction.

14
15 (b) Subject to the appropriation of funds by the
16 legislature and other limitations of this section, a movant
17 who meets the eligibility criteria in subsection (a) of
18 this section shall be provided compensation in the amount
19 of seventy-five dollars (\$75.00) per day while actually
20 incarcerated not to exceed three hundred thousand dollars
21 (\$300,000.00).

22

1 (c) The department of administration and information
2 shall administer the provision of compensation provided for
3 in this section.

4
5 (d) A movant who meets the eligibility criteria
6 established in subsection (a) of this section may present
7 an application not more than two (2) years from entry of
8 the order of actual innocence and exoneration to the
9 general services division of the department of
10 administration and information. If the department
11 determines the movant is eligible for compensation under
12 this section and the amount of the compensation under
13 subsection (b) of this section is equal to or less than
14 thirty thousand dollars (\$30,000.00), payment to the movant
15 shall be made in a lump sum. If the movant is determined
16 eligible for compensation under subsection (b) of this
17 section in excess of thirty thousand dollars (\$30,000.00),
18 the movant shall receive an initial payment of thirty
19 thousand dollars (\$30,000.00) and the remaining amount
20 shall be provided by distributing funds appropriated for
21 purposes of this section to the state treasurer to
22 annuitize the remaining balance. The annuity shall provide
23 equal payments to the movant of thirty thousand dollars
24 (\$30,000.00) annually until the balance has been paid. The

1 annuity shall provide that it shall not be sold,
2 discounted, or used as securitization for loans or
3 mortgages. The annuity may include a beneficiary designated
4 by the movant who shall be a spouse or immediate family and
5 shall provide for the annuity's continued disbursement to
6 the beneficiary in the event of the movant's death. In the
7 event the movant dies before the expiration of the two (2)
8 year period for presenting an application, the movant's
9 estate may present an application for the compensation
10 which is authorized to be provided under subsection (b) of
11 this section provided the application is presented within
12 the time specified in this subsection. The estate shall not
13 be eligible for compensation unless it complies with all
14 provisions and requirements of this section which would
15 have applied to the movant.

16

17 (e) The number of days for which compensation is
18 provided under subsection (b) of this section shall be
19 reduced proportionately for the number of days the movant's
20 sentence of imprisonment was served concurrently with a
21 sentence of imprisonment for a separate conviction.

22

23 (f) A movant may not receive compensation if he has
24 any action pending, has obtained a judgment or has settled

1 an action or claim against a governmental entity or an
2 employee of any governmental entity involving the
3 conviction for which the order of actual innocence and
4 exoneration was entered.

5

6 (g) Compensation to a movant may not be offset by any
7 expenses incurred by a governmental entity, including
8 expenses to secure custody of the movant and expenses to
9 feed, clothe, house and provide medical care for the
10 movant.

11

12 (h) A movant who receives compensation may not bring
13 any action against any governmental entity or an employee
14 of any governmental entity involving the conviction for
15 which the order of actual innocence and exoneration was
16 entered.

17

18 (j) A movant shall not receive compensation unless
19 the movant signs a release and waiver on behalf of himself
20 and his heirs, successors and assigns, forever releasing
21 all governmental entities and their employees in the
22 employees' official and individual capacity from all
23 present and future claims involving the conviction for
24 which the order of actual innocence and exoneration was

1 entered. The release shall provide that any payment to the
2 movant does not constitute a waiver of sovereign immunity.

3

4 (k) The provisions of the Wyoming Administrative
5 Procedure Act are not applicable to the grant or denial of
6 compensation under this section.

7

8 (m) The payment of compensation under this section
9 does not constitute a waiver of sovereign immunity.

10

11 (n) A movant is not entitled to compensation unless
12 funds have been appropriated to the department of
13 administration and information to provide compensation
14 authorized under this section.

15

16 **Section 2.** W.S. 1-39-104(a), 1-39-120 by creating a
17 new subsection (b) and 7-12-303(a) by creating a new
18 paragraph (iii) and by amending and renumbering (iii) as
19 (iv) are amended to read:

20

21 **1-39-104. Granting immunity from tort liability;**
22 **liability on contracts; exceptions.**

23

1 (a) A governmental entity and its public employees
2 while acting within the scope of duties are granted
3 immunity from liability for any tort except as provided by
4 W.S. 1-39-105 through 1-39-112 and limited by W.S.
5 1-39-121. Any immunity in actions based on a contract
6 entered into by a governmental entity is waived except to
7 the extent provided by the contract if the contract was
8 within the powers granted to the entity and was properly
9 executed and except as provided in W.S. 1-39-120(b) and
10 1-39-121. The claims procedures of W.S. 1-39-113 apply to
11 contractual claims against governmental entities.

12

13 **1-39-120. Exclusions from waiver of immunity.**

14

15 (b) Notwithstanding the waiver of immunity for tort
16 liability provided by W.S. 1-39-105 through 1-39-112 or the
17 waiver of immunity in actions based on contract provided by
18 W.S. 1-39-104, a governmental entity and its public
19 employees while acting within the scope of duties are
20 immune from a civil action in tort, contract or otherwise
21 alleging, in whole or in part, improper denial of
22 compensation provided for in W.S. 7-12-316.

23

1 7-12-303. New trial; motion for post-conviction
2 testing of DNA; motion contents; sufficiency of
3 allegations, consent to DNA sample; definitions,
4 compensation.

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6 (a) As used in this act:

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8 (iii) "Governmental entity" means a governmental
9 entity as defined by W.S. 1-39-103;

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11 ~~(iii)~~(iv) "This act" means W.S. 7-12-302 through
12 ~~7-12-315~~7-12-316.

13

14 **Section 3.** This act is effective July 1, 2011.

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(END)