

# HOUSE BILL No. 5509

December 13, 2005, Introduced by Reps. Bieda, Condino and Drolet and referred to the Committee on Judiciary.

A bill to provide compensation for individuals wrongly imprisoned for crimes; to prescribe the powers and duties of certain state governmental officers and agencies; and to provide remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "wrongful imprisonment compensation act."

3           Sec. 2. As used in this act:

4           (a) "Accusatory instrument" means the complaint filed against  
5 the claimant that resulted in the conviction and imprisonment that  
6 are the subject of the claim for compensation under this act.

7           (b) "Claimant" means the individual making a claim for  
8 compensation under this act.

1           Sec. 3. An individual convicted under the law of this state  
2 and subsequently imprisoned for 1 or more crimes that he or she did  
3 not commit may bring an action for damages against this state in  
4 the circuit court as allowed by this act.

5           Sec. 4. (1) The claimant in an action under this act shall  
6 attach to the complaint documentary evidence that establishes all  
7 of the following:

8           (a) The claimant was convicted of 1 or more crimes under the  
9 law of this state, was sentenced to a term of imprisonment for the  
10 crime or crimes, and served at least part of the sentence.

11           (b) The claimant's actual innocence was established when 1 of  
12 the following occurred, either on grounds not inconsistent with  
13 innocence or because the statute, or application of the statute, on  
14 which the accusatory instrument was based violated the constitution  
15 of the United States or this state:

16           (i) The claimant's judgment of conviction was reversed and the  
17 accusatory instrument dismissed.

18           (ii) If a new trial of the claimant was ordered, either the  
19 claimant was found not guilty at the new trial or was not retried  
20 and the accusatory instrument was dismissed.

21           (c) The action is not time-barred under section 7.

22           (2) A complaint filed under this section shall state facts in  
23 sufficient detail to permit the court to find that the claimant is  
24 likely to succeed at trial in proving both of the following:

25           (a) The claimant did not commit any of the acts charged in the  
26 accusatory instrument or the acts or omissions charged in the  
27 accusatory instrument did not constitute a crime.

1 (b) The claimant did not commit or suborn perjury or fabricate  
2 evidence to cause or bring about his or her conviction. A guilty  
3 plea to a crime the claimant did not commit does not constitute  
4 perjury under this subdivision.

5 (3) A complaint filed under this section shall be verified by  
6 the claimant.

7 (4) If the court finds after reading a complaint filed under  
8 this section that the claimant is not likely to succeed at trial,  
9 it shall dismiss the claim, either on its own motion or on the  
10 motion of this state.

11 Sec. 5. (1) A claimant under this act is entitled to judgment  
12 in the claimant's favor if the claimant provides evidence to prove  
13 all of the following:

14 (a) The claimant was convicted of 1 or more crimes, was  
15 sentenced to a term of imprisonment for the crime or crimes, and  
16 served at least part of the sentence.

17 (b) One of the following occurred, either on grounds not  
18 inconsistent with innocence or because the statute, or application  
19 of the statute, on which the accusatory instrument was based  
20 violated the constitution of the United States or this state:

21 (i) The claimant's judgment of conviction was reversed or  
22 vacated and the accusatory instrument dismissed.

23 (ii) If a new trial was ordered, the claimant either was found  
24 not guilty at the new trial or was not retried and the accusatory  
25 instrument dismissed.

26 (c) The claimant did not commit any of the acts charged in the  
27 accusatory instrument, and the acts or omissions charged in the

1 accusatory instrument did not constitute a crime.

2 (d) The claimant did not commit or suborn perjury or fabricate  
3 evidence to cause or bring about his or her conviction. A guilty  
4 plea to a crime the claimant did not commit is not perjury under  
5 this subdivision.

6 (2) If a court finds that a claimant under this act was  
7 wrongfully convicted and imprisoned, the court shall award damages,  
8 including, but not limited to, all of the following:

9 (a) Not less than \$50,000.00 for each year of incarceration,  
10 as adjusted to account for all of the following:

11 (i) Inflation from the effective date of this act.

12 (ii) Partial years served.

13 (b) Economic damages, including, but not limited to, lost  
14 wages, costs associated with the claimant's criminal defense and  
15 efforts to prove his or her innocence, and medical expenses  
16 required after release.

17 (c) Up to 10 years of physical and mental health care through  
18 the state employee health care system, to be offset by any amount  
19 provided through the claimant's employers during that time period.

20 (d) Compensation for costs incurred by the claimant for  
21 reasonable reintegrative services and mental and physical health  
22 care after release from wrongful imprisonment and before the date  
23 of the award.

24 (e) Reasonable attorney fees, calculated at 10% of the damage  
25 award, not to exceed \$75,000.00 plus an adjustment for inflation  
26 from the effective date of this act, and expenses. The attorney  
27 fees shall not be deducted from the compensation awarded the

1 claimant, and the claimant's attorney is not entitled to receive  
2 additional fees from the claimant.

3 (3) A damage award under subsection (2) is not subject to  
4 either of the following:

5 (a) A cap applicable to private parties in civil lawsuits.

6 (b) Taxes, except for the portion of the award for attorney  
7 fees.

8 (4) The acceptance by the claimant of an award under this  
9 section, or of a compromise or settlement of the claim, shall be in  
10 writing and, unless it is procured by fraud, is final and  
11 conclusive on the claimant, constitutes a complete release of all  
12 claims against this state, and is a complete bar to any action by  
13 the claimant against this state based on the same subject matter.

14 (5) A damage award under this section shall not be offset by  
15 any of the following:

16 (a) Expenses incurred by this state or any political  
17 subdivision of this state, including, but not limited to, expenses  
18 incurred to secure the claimant's custody or to feed, clothe, or  
19 provide medical services for the claimant.

20 (b) The value of any services awarded to the claimant under  
21 this section.

22 (c) The value of any reduction in fees for services awarded to  
23 the claimant under this section.

24 Sec. 6. (1) A court that enters a verdict, order, or judgment  
25 as a result of an event described in section 4(1)(b) on or after  
26 the effective date of this act shall provide a copy of this act to  
27 the defendant at the time the verdict, order, or judgment is

1 entered. The individual shall be required to acknowledge his or her  
2 receipt of a copy of this act in writing on a form approved by the  
3 state court administrator's office. The acknowledgment shall be  
4 filed with the court and is admissible in any proceeding filed by a  
5 claimant under this act.

6 (2) If a claimant entitled to receive a copy of this act under  
7 subsection (1) shows that he or she did not properly receive the  
8 copy, he or she is entitled to a 1-year extension of the 3-year  
9 time limit in section 7.

10 (3) The state court administrator's office shall make a  
11 reasonable attempt to notify every person in whose favor a verdict,  
12 order, or judgment was entered following an event described in  
13 section 4(1)(b) before enactment of this act of his or her rights  
14 under this act.

15 Sec. 7. An action for compensation under this act shall be  
16 commenced within 3 years after the entry of a verdict, order, or  
17 judgment as the result of an event described in section 4(1)(b).  
18 Any action by this state challenging or appealing a verdict, order,  
19 or judgment entered as the result of an event described in section  
20 4(1)(b) tolls the 3-year period. An individual convicted,  
21 incarcerated, and released from custody before the effective date  
22 of this act shall commence an action under this act within 5 years  
23 of the effective date of this act.

24 Enacting section 1. This act does not take effect unless  
25 Senate Bill No.\_\_\_\_ or House Bill No. 5484(request no. 04154'05 a\*)  
26 of the 93rd Legislature is enacted into law.