

**SENATE BILL No. 229**

By Committee on Judiciary

2-11

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1 AN ACT concerning civil actions; relating to actions for wrongful  
2 conviction and imprisonment; providing for payment of interest;  
3 directing the attorney general to file certain collateral actions;  
4 amending K.S.A. 2020 Supp. 60-5004 and repealing the existing  
5 section.

6  
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2020 Supp. 60-5004 is hereby amended to read as  
9 follows: 60-5004. (a) As used in this section, "claimant" means a person  
10 convicted and subsequently imprisoned for one or more crimes that such  
11 person did not commit.

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

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

17 (A) The claimant was convicted of a felony crime and subsequently  
18 imprisoned;

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

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

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

32 (2) The court, in exercising its discretion as permitted by law  
33 regarding the weight and admissibility of evidence submitted pursuant to  
34 this section, may, in the interest of justice, give due consideration to  
35 difficulties of proof caused by the passage of time, the death or  
36 unavailability of witnesses, the destruction of evidence or other factors not

1 caused by such persons or those acting on their behalf.

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

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

11 (3) All pleadings shall be captioned, "In the matter of the wrongful  
12 conviction of \_\_\_\_\_."

13 (4) Any claim filed pursuant to this section shall be served on the  
14 attorney general in accordance with the code of civil procedure.

15 (5) The suit for ~~a~~ *the* claim filed pursuant to this section shall be tried  
16 by the court, and no request for a jury trial may be made pursuant to  
17 K.S.A. 60-238, and amendments thereto.

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

19 (A) \$65,000 for each year of imprisonment, except as provided in  
20 subsection (e)(2); and

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

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

29 (3) (A) Except as provided in subparagraph (B), the court shall order  
30 that the award be paid as a combination of an initial payment not to exceed  
31 \$100,000 or 25% of the award, whichever is greater, and the remainder as  
32 an annuity not to exceed \$80,000 per year. The claimant shall designate a  
33 beneficiary or beneficiaries for the annuity by filing such designation with  
34 the court.

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

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

39 (A) Shall be entitled to receive reasonable attorney fees and costs  
40 incurred in the action brought pursuant to this section not to exceed a total  
41 of \$25,000, unless a greater reasonable total is authorized by the court  
42 upon a finding of good cause shown;

43 (B) *shall be entitled to receive interest on the damages awarded*

1 *under this section from the date the suit for the claim was filed pursuant to*  
2 *this section at the rate provided for interest on judgments in K.S.A. 16-*  
3 *204, and amendments thereto;*

4 (C) may also be awarded other non-monetary relief as sought in the  
5 complaint including, but not limited to, counseling, housing assistance and  
6 personal financial literacy assistance, as appropriate;

7 ~~(D)~~ shall be entitled to receive tuition assistance pursuant to  
8 K.S.A. 74-32,195, and amendments thereto; and

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

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

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

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

41 (g) If the court finds that the claimant is entitled to a judgment, it  
42 shall enter a certificate of innocence finding that the claimant was innocent  
43 of all crimes for which the claimant was mistakenly convicted. The clerk

1 of the court shall send a certified copy of the certificate of innocence and  
2 the judgment entry to the attorney general for payment pursuant to K.S.A.  
3 75-6117, and amendments thereto.

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

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

10 (A) Claimant's full name;

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

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

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

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

17 (F) identity of the arresting law enforcement authority and identity of  
18 the convicting court.

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

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

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

1 K.S.A. 21-2511(a), and amendments thereto, related to any offense other  
2 than the offense for which the court has entered a certificate of innocence.

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

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

11 (l) The decision of the district court may be appealed directly to the  
12 supreme court pursuant to the code of civil procedure.

13 Sec. 2. K.S.A. 2020 Supp. 60-5004 is hereby repealed.

14 Sec. 3. This act shall take effect and be in force from and after its  
15 publication in the statute book.