

The House Committee on Judiciary Non-civil offers the following substitute to HB 230:

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 definitions; 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 procedural rules; to provide for claims for
8 compensation; to provide for standards for compensation; to provide for limitations of
9 claims; to provide for exceptions; to provide for reports on claims being transmitted to the
10 executive and legislative branch; to provide for record restriction; to provide for related
11 matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

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

19 style="text-align:center">**SECTION 2.**

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

24 "28-5-60.

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

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

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

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

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

42 **SECTION 3.**

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

45 **SECTION 4.**

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

48 "28-5-87.

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

51 **SECTION 5.**

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

53 "Part 4

54 28-5-110.

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

56 28-5-111.

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

63 28-5-112.

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

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

72 28-5-113.

73 (a) No claim for the payment of compensation under this part shall be considered by the
74 board unless a notice of claim has been filed with the board within three years after the date
75 the claimant's eligibility has been established as set forth in Code Section 28-5-112 or
76 within three years of July 1, 2015, whichever occurs later.

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

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, and the remaining balance shall be in the form of annuity contract
102 funded by the board on behalf of the claimant, provided that:

103 (A) Such annuity contract shall be secured from an insurance company licensed under
104 the laws of this state and whose claims-paying ability is rated as superior or excellent
105 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 voucher for tuition for up to 120 hours and
109 any 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 shall not be construed to guarantee acceptance
113 of the claimant into any such public postsecondary institution nor prohibit the claimant
114 from participating in any other program of financial assistance for postsecondary
115 education. The board shall coordinate with the Board of Regents of the University
116 System of Georgia and the State Board of the Technical College System of Georgia to
117 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 demise, were dependent
 132 upon 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 transmit such statement to the chairperson
 136 of the House Committee on Appropriations. Such chairperson shall present such
 137 information to the full committee if a resolution seeking compensation is filed. The board's
 138 recommendation shall be advisory only. The General Assembly shall act on such
 139 recommendation in accordance with law and the rules of the House of Representatives and
 140 Senate for action upon 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 relative 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 **SECTION 7.**

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