STATE OF NEW YORK

5306--A

2017-2018 Regular Sessions

IN ASSEMBLY

February 7, 2017

Introduced by M. of A. AUBRY, BENEDETTO, D'URSO, BARRON, MOSLEY, COLTON, CRESPO, WILLIAMS, L. ROSENTHAL, McDONOUGH, DE LA ROSA, DICKENS, COOK, SEPULVEDA, BLAKE, SIMON, HYNDMAN, JAFFEE, PEOPLES-STOKES, HOOPER, GOTTFRIED, ORTIZ, MORINELLO, SOLAGES, TITONE, SEAWRIGHT -- Multi-Sponsored by -- M. of A. CAHILL, HIKIND, M. G. MILLER, WRIGHT -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the court of claims act and the tax law, in relation to claims for unjust conviction and imprisonment

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "wrongfully convicted recovery act".

§ 2. Section 8-b of the court of claims act, as added by chapter 1009 of the laws of 1984, subdivision 2 as amended by chapter 210 of the laws of 2007, is amended to read as follows:

§ 8-b. Claims for unjust conviction and imprisonment. 1. The legislature finds and declares that innocent persons who have been wrongly convicted of crimes and subsequently imprisoned have been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law and that such persons should have an available avenue of redress over and above the existing tort remedies to seek compensation for damages. The legislature intends by enactment of the provisions of this section that those innocent persons who can demonstrate by clear and convincing evidence that they were unjustly convicted and imprisoned be able to recover damages against the state. In light of the substantial burden of proof that must be carried by such persons, it is the intent of the legislature that the court, in exercising its discretion as permitted by law regarding the weight and admissi-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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bility of evidence submitted pursuant to this section, shall, in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not caused by such persons or those acting on their behalf.

2. Any person convicted and subsequently imprisoned for one or more felonies or misdemeanors against the state which he **or she** did not commit may, under the conditions hereinafter provided, present a claim for damages against the state. In scheduling court appearances and filing deadlines, the court shall give docket priority at each stage of the proceeding to such claims for damages under this subdivision where the claimant asserts proof of innocence through DNA evidence. Any adjournments granted in the course of such a proceeding should be for as short a time as is practicable.

3. In order to present the claim for unjust conviction and imprisonment, claimant must establish by documentary evidence that:

(a) he **or she** has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and

(b) (i) he **or she** has been pardoned upon the ground of innocence of the crime or crimes for which he **or she** was sentenced and which are the grounds for the complaint; or (ii) his **or her** judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he **or she** was found not guilty at the new trial or he **or she** was not retried and the accusatory instrument dismissed; provided that the [~~judgement~~] **judgment** of conviction was reversed or vacated, and the accusatory instrument was dismissed, on any of the following grounds: (A) paragraph (a), (b), (c), (e) [~~or~~]**,** (g) **or (g-1)** of subdivision one of section 440.10 of the criminal procedure law; or (B) subdivision one (where based upon grounds set forth in [~~item (A) hereof~~] **clause (A) of this subparagraph**), two, three (where the count dismissed was the sole basis for the imprisonment complained of) or five of section 470.20 of the criminal procedure law; or (C) comparable provisions of the former code of criminal procedure or subsequent law; or (D) the statute, or application thereof, on which the accusatory instrument was based violated the constitution of the United States or the state of New York; and

(c) his **or her** claim is not time-barred by the provisions of subdivision seven of this section.

4. The claim shall state facts in sufficient detail to permit the court to find that claimant is likely to succeed at trial in proving that (a) he **or she** did not commit any of the acts charged in the accusatory instrument or his **or her** acts or omissions charged in the accusatory instrument did not constitute a felony or misdemeanor against the state, and (b) he **or she** did not by his **or her** own conduct cause or bring about his **or her** conviction. The claim shall be verified by the claimant. If the court finds after reading the claim that claimant is not likely to succeed at trial, it shall dismiss the claim, either on its own motion or on the motion of the state.

5. In order to obtain a judgment in his **or her** favor, claimant must prove by clear and convincing evidence that:

(a) he **or she** has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and

(b) (i) he **or she** has been pardoned upon the ground of innocence of the crime or crimes for which he **or she** was sentenced and which are the

grounds for the complaint; or (ii) his **or her** judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he **or she** was found not guilty at the new trial or he **or she** was not retried and the accusatory instrument dismissed; provided that the [~~judgement~~] **judgment** of conviction was reversed or vacated, and the accusatory instrument was dismissed, on any of the following grounds: (A) paragraph (a), (b), (c), (e) [~~or~~], (g) **or (g-1)** of subdivision one of section 440.10 of the criminal procedure law; or (B) subdivision one (where based upon grounds set forth in [~~item (A) hereof~~] **clause (A) of this subparagraph**), two, three (where the count dismissed was the sole basis for the imprisonment complained of) or five of section 470.20 of the criminal procedure law; or (C) comparable provisions of the former code of criminal procedure or subsequent law; or (D) the statute, or application thereof, on which the accusatory instrument was based violated the constitution of the United States or the state of New York; and

(c) he **or she** did not commit any of the acts **he or she was convicted of or his or her acts or omissions** charged in the accusatory instrument or [~~his acts or omissions charged in the accusatory instrument~~] **that any such acts** did not constitute a felony or misdemeanor against the state; [~~and~~]

(d) he **or she** did not by his **or her** own conduct cause or bring about his **or her** conviction**; and**

(e) he or she was not under sentence for a separate crime during the period of time for which compensation is sought.

6. If the court finds that the claimant is entitled to a judgment, it shall award damages in [~~such~~] **the** sum of [~~money~~] **not less than one million dollars for each year of incarceration and such additional damages** as the court determines will fairly and reasonably compensate him **or her**. **Such additional damages may include, but need not be limited to the following:**

(a) compensation for lost wages;

(b) reimbursement for legal fees expended for the defense of the convicted person at trial and upon appeal;

(c) medical expenses, including therapy;

(d) enrollment in the health benefit plan established pursuant to section one hundred sixty-one of the civil service law. The full cost of premium or subscription charges for such coverage shall be paid by the state;

(e) educational assistance including:

(i) free tuition for the claimant and for any of the claimant's children for attending a state university or college;

(ii) free tuition or reimbursement of tuition for the claimant and for any of the claimant's children for attending a CUNY university or college; and

(iii) free tuition at a state funded vocational program and/or job skills program for the claimant and for any of the claimant's children;

(f) reimbursement of any child-support arrears that accrued and were paid, including reimbursement to the custodial parent of the amount he or she was receiving prior to the incarceration if it was modified by virtue of the claimant's incarceration;

(g) treatment as veterans for purposes of receiving the following benefits:

(i) access to the Homes for Veterans Program, which offers fixed-rate mortgages with interest rates one-half percent below the interest rates charged on SONYMA mortgages, with closing cost assistance; and

(ii) eligibility for appointment to non-competitive state employment positions pursuant to sections fifty-five-b and fifty-five-c of the civil service law. Those employees hired under this subparagraph shall be afforded the same opportunity to take promotional examinations as provided to employees in the competitive class.

7. Any person claiming compensation under this section based on a pardon that was granted before the effective date of this section or the dismissal of an accusatory instrument that occurred before the effective date of the chapter of the laws of two thousand eighteen that amended this section shall file his or her claim within two years after [~~the~~] such effective date [~~of this section~~]. Any person claiming compensation under this section based on a pardon that was granted on or after the effective date of this section or the dismissal of an accusatory instrument that occurred on or after the effective date of the chapter of the laws of two thousand eighteen that amended this section shall file his or her claim within [~~two~~] three years after the pardon or dismissal.

8. The claimant shall be entitled to reasonable attorney's fees incurred in the process of vacating or reversing his or her criminal conviction. The claimant may petition the court of claims in seeking reasonable attorney's fees against the state pursuant to this section. Any award of attorney's fees shall be reimbursable by the state.

9. Any award of damages pursuant to the provisions of this section shall be exempt from income tax to the extent provided in section thirteen-a of the tax law.

§ 3. The tax law is amended by adding a new section 13-a to read as follows:

§ 13-a. Exemption from taxation for persons wrongfully convicted and imprisoned. Notwithstanding any provision of law to the contrary, damage award amounts received, including accumulated interest, by persons wrongfully convicted and imprisoned as provided in section eight-b of the court of claims act, whether or not includable in income for federal income tax purposes, shall be exempt from all state and local taxes imposed on or measured by income; provided however, that this exemption shall not apply to amounts received from assets acquired with such assets or with the proceeds from the sale of such assets.

§ 4. This act shall take effect immediately.