

**COMPENSATION FOR WRONGFUL
CONVICTION AND INCARCERATION**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Litvack

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Judicial Code by establishing a right and procedure for a civil action claiming damages for wrongful conviction and incarceration.

Highlighted Provisions:

This bill:

- ▶ establishes conditions to be met in order to bring an action for wrongful conviction and incarceration, including proof of actual innocence by a pardon or reversal of the judgment of conviction;
- ▶ provides for a financial award for each year or portion of a year that the claimant was incarcerated and compensation for related costs, including those resulting from lost wages, health care, and attorney fees;
- ▶ requires that on and after May 1, 2006, the effective date of this bill, courts and the Board of Pardons and Parole provide copies of the statutory provisions created by this bill to persons whose pardon or reversal of conviction appear to meet the requirements for recovery under this act; and
- ▶ provides time limits for when a claim must be commenced.

Monies Appropriated in this Bill:

None

Other Special Clauses:



None

Utah Code Sections Affected:

ENACTS:

78-17a-101, Utah Code Annotated 1953

78-17a-102, Utah Code Annotated 1953

78-17a-103, Utah Code Annotated 1953

78-17a-104, Utah Code Annotated 1953

78-17a-105, Utah Code Annotated 1953

78-17a-106, Utah Code Annotated 1953

78-17a-107, Utah Code Annotated 1953

78-17a-108, Utah Code Annotated 1953

78-17a-109, Utah Code Annotated 1953

78-17a-110, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78-17a-101** is enacted to read:

**CHAPTER 17a. COMPENSATION FOR WRONGFUL
CONVICTION AND INCARCERATION**

78-17a-101. Title.

This chapter is known as "Compensation for Wrongful Conviction and Incarceration."

Section 2. Section **78-17a-102** is enacted to read:

78-17a-102. Eligibility.

Any person convicted in Utah and subsequently imprisoned for one or more crimes which he did not commit may bring a civil action for damages for wrongful conviction and imprisonment against the state as provided in this chapter.

Section 3. Section **78-17a-103** is enacted to read:

78-17a-103. Proof of claim for damages.

To present an actionable claim for wrongful conviction and imprisonment, the claimant must establish by documentary evidence that:

(1) he has been convicted in Utah of one or more crimes, was subsequently sentenced to a term of incarceration for any of these crimes, and has served all or any part of the sentence;

(2) establishes his actual innocence regarding the crime or crimes for which he was convicted, by documented evidence of:

(a) a pardon for the crime or crimes for which he was sentenced and which are the grounds for the claim; or

(b) the reversal or vacation of his judgment of conviction, and dismissal of the charging document, or if a new trial was ordered, documentation of a finding of not guilty at the new trial, or if the claimant was not retried, documentation of dismissal of the charging document, provided that the grounds for action under this Subsection (1)(b) were not inconsistent with actual innocence or were not because the statute, or its application, on which the charging document was based violated the Constitution of the United States or the Constitution of Utah; and

(3) his claim is not prohibited by the time limitations of Section 78-17a-108.

Section 4. Section **78-17a-104** is enacted to read:

78-17a-104. Contents of claim of action.

(1) The claim under this chapter shall state facts in sufficient detail to permit the court to find that the claimant is likely to succeed at trial in proving that:

(a) the claimant did not commit any of the acts alleged in the charging document, or his acts or omissions charged in the charging document did not constitute a crime; and

(b) the claimant did not commit or induce another to commit perjury or fabricate evidence to cause or bring about his conviction.

(2) (a) A guilty plea to a crime the claimant did not commit does not constitute perjury under this section.

(b) Statements by the claimant implicating himself do not, without corroborating information, constitute a conclusion that the claimant is not likely to succeed at trial.

(3) The claim shall be verified by the claimant.

(4) If the court finds that the 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.

Section 5. Section **78-17a-105** is enacted to read:

78-17a-105. Jurisdiction.

Claims of wrongful conviction and imprisonment shall be filed in the district court in the county where the claimant alleges under this chapter that he was wrongfully convicted or in

the state district court in Salt Lake City, Utah.

Section 6. Section **78-17a-106** is enacted to read:

78-17a-106. Judgment and award.

(1) To obtain a civil judgment for an award under this chapter, the claimant shall provide evidence proving all the claims submitted as required under Section 78-17a-103.

(2) If the court finds that the claimant was wrongfully convicted and imprisoned under this chapter the court shall conduct an evidentiary hearing to determine the amount of damages to be awarded, which shall include:

(a) not less than \$40,000 for each year of incarceration, and an additional \$30,000 for each year served on death row, as adjusted by the Division of Finance for:

(i) inflation as measured from May 1, 2006, the effective date of this section; and

(ii) any partial years of incarceration served, as pro-rated on a daily basis;

(b) economic damages, including lost wages, costs associated with his criminal defense, and efforts to prove his innocence;

(c) medical expenses required after release that are reasonably related to the claimant's period of incarceration;

(d) not more than ten years of physical and mental health care, as the court finds to be appropriate, and to be offset by any amount provided through the claimant's employers during this period;

(e) compensation for any reasonable social reintegration services and mental and physical health care costs incurred by the claimant during the time period between the claimant's release from mistaken incarceration and the date of the award under this chapter;

(f) reasonable attorney fees calculated at 10% of the award under this chapter, but not to exceed \$75,000, plus expenses, as adjusted by the Division of Finance to account for inflation as measured from May 1, 2006.

(3) (a) Attorney fees awarded under Subsection (2)(f) may not be deducted from the compensation due to the claimant.

(b) The claimant's counsel is not entitled to receive from the client any fees in addition to those awarded under this chapter.

(4) If the court authorizes an award under this chapter, the court shall also:

(a) issue an order of expungement of the claimant's criminal record for all acts in the

121 charging document upon which the award is based; and

122 (b) provide a letter from the court indicating the conviction and imprisonment was
123 wrongful, and an apology on behalf of the state.

124 (5) The damage award is not subject to:

125 (a) any recoveries by private parties in civil lawsuits that are subject to caps; or

126 (b) any taxes, except for those portions of the judgment awarded as attorney fees for
127 bringing a claim under this chapter.

128 (6) The claimant's acceptance of an award under this chapter shall be in writing and is,
129 except if procured by fraud:

130 (a) the final and conclusive resolution of the claim; and

131 (b) a complete release of any claim against the state and a complete bar to any action
132 by the claimant against the state by reason for the same subject matter.

133 (7) The damage award may not be offset by:

134 (a) any expenses incurred by the state or any political subdivision of the state,
135 including expenses incurred to secure the claimant's custody, or to feed, clothe, or provide
136 medical services for the claimant; or

137 (b) the value of any services or the value of any reduction in fees for services to be
138 provided to the claimant as a part of the award.

139 Section 7. Section **78-17a-107** is enacted to read:

140 **78-17a-107. Notice to persons receiving pardons or reversal of conviction.**

141 (1) (a) A court granting a person judicial relief consistent with the conditions required
142 in Section 78-17a-103 on and after May 1, 2006 shall provide a printed copy of this chapter to
143 the person at the time the court determines the conditions are satisfied.

144 (b) The Board of Pardons and Parole, upon issuing a full pardon under Title 77,
145 Chapter 27, Pardons and Paroles, on and after May 1, 2006, shall provide a printed copy of this
146 chapter to the person to whom the pardon is granted.

147 (2) (a) The person may decline or accept the copy of this chapter, and shall
148 acknowledge receipt or refusal of a copy in writing on a form established by the Office of the
149 Court Administrator.

150 (b) The court shall enter the acknowledgment on the record.

151 (c) The acknowledgment is admissible in any proceeding filed by a claimant under this

chapter.

(3) If a claimant granted judicial relief or a full pardon on or after May 1, 2006 demonstrates that he did not receive a copy of this chapter as required under Subsection (1), the time limit for submitting a claim under this chapter is extended by one year.

(4) The Administrative Office of the Courts shall make reasonable attempts to notify all persons pardoned or granted judicial relief consistent with the conditions set forth in Section 78-17a-103 of their rights under this chapter.

Section 8. Section **78-17a-108** is enacted to read:

78-17a-108. Time limitations for bringing an action for a claim.

(1) An action for an award under this chapter commenced by a person convicted, incarcerated, and released from custody on or after May 1, 2006 shall be commenced within three years after either the granting of a pardon or granting of judicial relief and the satisfaction of the conditions as required under Section 78-17a-103, except that any action by the state challenging or appealing the grant of judicial relief tolls this period of three years.

(2) An action for an award under this chapter commenced by a person convicted, incarcerated, and released from custody prior to May 1, 2006 shall be commenced under this chapter on or before June 30, 2016.

Section 9. Section **78-17a-109** is enacted to read:

78-17a-109. Appeal.

Any party to an action under this chapter is entitled to the rights of appeal afforded to parties in a civil action as provided in the Utah Rules of Appellate Procedure.

Section 10. Section **78-17a-110** is enacted to read:

78-17a-110. Rights of victims.

An action under this chapter is not an "important criminal justice hearing" or "important juvenile justice hearing" as defined in Section 77-38-2 of Title 77, Chapter 38, Rights of Crime Victims Act.

Legislative Review Note

as of 1-19-06 4:25 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0164

Compensation for Wrongful Conviction and Incarceration 07-Feb-06
9:54 AM

State Impact

Passage of HB164 would require adding two FTEs to the Attorney General's Office at \$183,400 in FY07 and \$178,200 for FY08. Individuals that prove their innocence would receive no less than \$40,000 per year of incarceration, attorney's fees, mental health treatment and physical health care as awarded by the Court.

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2007</u>	<u>FY 2008</u>
	<u>Approp.</u>	<u>Approp.</u>	<u>Revenue</u>	<u>Revenue</u>
General Fund	\$183,400	\$178,200	\$0	\$0
TOTAL	\$183,400	\$178,200	\$0	\$0

Individual and Business Impact

This bill could produce a positive fiscal impact for those that have been wrongfully convicted and incarcerated.

Office of the Legislative Fiscal Analyst