



SPONSOR: Rep. Lynn & Rep. Dorsey Walker & Sen. Brown &
Sen. Pettyjohn & Sen. Townsend
Reps. Baumbach, Lambert

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 118

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO THE DELAWARE WRONGFUL
IMPRISONMENT COMPENSATION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Part IV, Title 10 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 Chapter 70. Delaware Wrongful Imprisonment Compensation Act.

4 § 7001. Short title.

5 This chapter is to be known and may be cited as the “Delaware Wrongful Imprisonment Act”.

6 § 7002. Definitions.

7 As used in this chapter:

8 (1) "Charges" means a criminal complaint filed against a plaintiff by the Attorney General that resulted in the
9 conviction and imprisonment of the plaintiff that are the subject of the claim for compensation under this chapter.

10 (2) "New evidence" means any evidence that was not presented in the proceedings leading to a plaintiff's
11 conviction, including relating to evidence that was presented in the proceedings leading to the plaintiff's conviction
12 new testimony, expert interpretation, the results of DNA testing, or other test results relating to evidence that was
13 presented in the proceedings leading to the plaintiff's conviction. “New evidence” does not include a recantation by a
14 witness unless there is other evidence to support the recantation or unless the Attorney General agrees that the
15 recantation constitutes new evidence without other evidence to support the recantation.

16 (3) "Plaintiff" means an individual making a claim for compensation under this chapter. “Plaintiff” does not
17 include the estate of an individual entitled to make a claim for compensation under this chapter, the personal
18 representative of the estate, or any heir, devisee, beneficiary, or other person who is entitled under other law to pursue a
19 claim for damages, injury, or death suffered by the individual.

20 (4) "State correctional facility" means a correctional facility maintained and operated by the Department of
21 Correction or a correctional facility of another jurisdiction to which an individual is transferred by the Department of
22 Correction.

23 § 7003. Wrongful conviction and imprisonment; action for compensation against the State.

24 An individual convicted under the law of this State and subsequently imprisoned in a state correctional facility for
25 1 or more crimes that the individual did not commit may bring an action for compensation against this State in the Superior
26 Court under this chapter.

27 § 7004. Complaint; documentation by plaintiff; service; notice to victim; discovery.

28 (a) To bring an action under § 7003 of this title, a plaintiff must file a verified complaint. The plaintiff shall attach
29 to the verified complaint documentation that establishes all of the following:

30 (1) The plaintiff was convicted of 1 or more crimes under the law of this State, was sentenced to a term of
31 imprisonment in a state correctional facility for the crime, and served at least part of the sentence.

32 (2) The plaintiff's judgment of conviction was reversed or vacated and either the charges were dismissed or on
33 retrial the plaintiff was found to be not guilty.

34 (3) New evidence demonstrates that the plaintiff was not the perpetrator of the crime and was not an accessory
35 or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of
36 conviction, dismissal of the charges, or finding of not guilty.

37 (b) The plaintiff shall serve a copy of a complaint filed under this section on the Attorney General. The Attorney
38 General may answer and contest the complaint.

39 (c) If the plaintiff's conviction was for a crime for which the Attorney General must provide notice to a victim
40 under Chapter 94 of Title 11, the Attorney General shall provide notice to the victim of the crime that is the subject of the
41 complaint filed under this section.

42 (d) The plaintiff and the Attorney General may conduct discovery in an action filed under this chapter.

43 § 7005. Judgement in plaintiff's favor in action for compensation.

44 (a) In an action under this chapter, a plaintiff is entitled to judgment in the plaintiff's favor if the plaintiff proves all
45 of the following by clear and convincing evidence:

46 (1) The plaintiff was convicted of 1 or more crimes under the law of this State, was sentenced to a term of
47 imprisonment in a state correctional facility for the crime, and served at least part of the sentence.

48 (2) The plaintiff's judgment of conviction was reversed or vacated and either the charges were dismissed or
49 the plaintiff was determined on retrial to be not guilty. However, the plaintiff is not entitled to compensation under this
50 chapter if the plaintiff was convicted of another criminal offense arising from the same transaction and either that
51 offense was not dismissed or the plaintiff was convicted of that offense on retrial.

52 (3) New evidence demonstrates that the plaintiff did not perpetrate the crime and was not an accomplice or
53 accessory to the acts that were the basis of the conviction, resulted in the reversal or vacation of the charges in the
54 judgment of conviction, and resulted in either dismissal of all of the charges or a finding of not guilty on all of the
55 charges on retrial.

56 (b) Subject to subsections (d) and (e) of this section, if a court finds that a plaintiff was wrongfully convicted and
57 imprisoned, the court shall award compensation as follows:

58 (1) Fifty thousand dollars for each year from the date the plaintiff was imprisoned until the date the plaintiff
59 was released, regardless of whether the plaintiff was released from imprisonment on parole or because the maximum
60 sentence was served. For incarceration of less than a year in prison, this amount is prorated to 1/365 of \$50,000 for
61 every day the plaintiff was incarcerated.

62 (2) Reasonable attorney fees incurred in an action under this chapter. All of the following apply to attorney
63 fees under this chapter:

64 a. The Superior Court may not award attorney fees unless the plaintiff has actually paid the amount
65 awarded under this paragraph (b)(2) to the attorney.

66 b. Notwithstanding paragraph (b)(2)a. of this section, it is not necessary that the plaintiff pay the attorney
67 fees before an award of compensation under paragraph (b)(1) of this section. The court may award attorney fees on
68 a motion brought after the award of compensation under paragraph (b)(1) of this section.

69 c. The attorney fees must not exceed 10% of the total amount awarded under paragraph (b)(1) of this
70 section or \$50,000, whichever is less, plus expenses.

71 d. An award of attorney fees under this chapter may not be deducted from the compensation awarded the
72 plaintiff, and the plaintiff's attorney is not entitled to receive additional fees from the plaintiff.

73 (c) An award under subsection (b) of this section is not subject to a limit on the amount of damages except as
74 stated in this chapter.

75 (d) Compensation may not be awarded under subsection (b) of this section for any time during which the plaintiff
76 was imprisoned under a concurrent or consecutive sentence for another conviction.

77 (e)(1) Compensation may not be awarded under subsection (b) of this section for any injuries sustained by the
78 plaintiff while imprisoned.

79 (2) The making of a claim or receipt of compensation under this chapter does not preclude a claim or action
80 for compensation because of injuries sustained by the plaintiff while imprisoned.

81 (f) The Superior Court may order that the total amount of compensation awarded under paragraph (b)(1) of this
82 section be paid to the plaintiff in a single payment or in multiple payments. If the Court orders the compensation to be paid
83 in multiple payments, the initial payment must be 20% of the total amount awarded or more and the remainder of the
84 payments must be made over not more than 10 years.

85 (g) An award of compensation under this chapter is not a finding of wrongdoing against a person. An award of
86 compensation under this chapter is not admissible in evidence in a civil action that is related to the investigation,
87 prosecution, or conviction that gave rise to the wrongful conviction or imprisonment.

88 (h)(1) The acceptance by the plaintiff of an award under this chapter, or of a settlement of the claim, must be in
89 writing and, unless it is procured by fraud, is final and conclusive on the plaintiff, constitutes a complete release of all
90 claims against this State, and is a complete bar to any action in a court of this State by the plaintiff against this State based
91 on the same subject matter.

92 (2) The acceptance by the plaintiff of an award under this chapter, or of a settlement of the plaintiff's claim,
93 does not operate as a waiver of, or bar to, any action in federal court against an individual alleged to have been
94 involved in the investigation, prosecution, or conviction that gave rise to the wrongful conviction or imprisonment.

95 (i) A compensation award under subsection (b) of this section may not be offset by any of the following:

96 (1) Expenses incurred by this State or any political subdivision of this State, including expenses incurred to
97 secure the plaintiff's custody or to feed, clothe, or provide medical services for the plaintiff while imprisoned.

98 (2) The value of any services awarded to the plaintiff under this section.

99 (3) The value of any reduction in fees for services awarded to the plaintiff under this chapter.

100 (j) An award under subsection (b) of this section is not subject to state income taxes.

101 (k) A compensation award under this chapter is subject to the payment of child support, including child support
102 arrearages, owed by the plaintiff. Child support arrearages must be deducted from an award under this chapter before the
103 plaintiff receives any of the money from the award. This subsection does not affect an ongoing child support obligation of
104 the plaintiff.

105 (l) This chapter does not impair or limit the right of the State or a county or municipality to collect a debt owed by
106 a plaintiff from the plaintiff's award of compensation under this chapter.

107 (m) An award of compensation under this chapter is subject to setoff or reimbursement for damages obtained for
108 the wrongful conviction or imprisonment from any other person.

109 (n) If the Superior Court determines that a plaintiff was wrongfully convicted and imprisoned, the Court shall enter
110 an order that provides that any record of the arrest, fingerprints, conviction, and sentence of the plaintiff related to the

wrongful conviction be expunged from the plaintiff's criminal history record. A document that is the subject of an order entered under this subsection is exempt from disclosure under the Freedom of Information Act, Chapter 100 of Title 29.

§ 7006. Wrongful imprisonment compensation fund; report.

(a) The Wrongful Imprisonment Compensation Fund ("Fund") is created as a separate fund in the State Treasury.

(b) The State Treasurer may receive money or other assets from any source for deposit into the Fund.

(c) The State Treasurer shall expend money from the Fund only for the purpose of paying claims authorized under this chapter and costs of administration. The State Treasurer shall pay money from the Fund in amounts and at the times as ordered by the Superior Court under this chapter.

(d) Money in the Fund at the close of a fiscal year must remain in the Fund and not revert to the General Fund.

(e) If there is insufficient money in the Fund to pay claims as ordered under this chapter, the State Treasurer shall pay claims that are ordered but not paid if money becomes available in the Fund, and pay those claims before subsequently ordered claims. The State Treasurer shall develop and implement a process to notify the General Assembly, Director of the Office of Management and Budget, and Controller General that money in the Fund may be insufficient to cover future claims when the State Treasurer reasonably believes that within 60 days the money in the Fund will be insufficient to pay claims. The process must, at a minimum, do all of the following:

(1) Identify a specific date by which the money in the Fund will become insufficient to pay claims.

(2) Outline a clear process indicating the order in which claims pending with the Fund will be paid.

(3) Outline a clear process indicating the order in which claims that were pending with the Fund when money became insufficient will be paid, if money subsequently becomes available.

(f) The Attorney General shall report quarterly to the Joint Finance Committee, Controller General, and Director of the Office of Management and Budget all of the following as of the end of the quarter:

(1) All payments made from the Fund in the quarter, indicating for each payment whether it is for a new settlement or award or continued payment for a previous settlement or award.

(2) Any settlements that have been reached or awards that have been made for which payments have not been made.

(3) The number of actions in which an order or judgment has been entered denying the claim, and the reasons for each denial.

(4) The number of known claims for compensation under this chapter for which there are no final settlements or awards, indicating for each claim, if known, the amount claimed and the potential payment.

(5) The balance in the Fund.

141 (g) Compensation under this chapter must be paid from the Fund and not from a State agency's funds.

142 § 7007. Action for compensation; commencement.

143 (a) An action for compensation under this chapter must be commenced within 3 years after entry of a verdict,
144 order, or judgment as the result of an event under § 7004(a)(2) of this title.

145 (b) Any action by this State challenging or appealing a verdict, order, or judgment entered as the result of an event
146 described in § 7004(a)(2) of this title tolls the period under subsection (a) of this section.

147 (c) An individual convicted, imprisoned, and released from custody before July 1, 2023, must commence an action
148 under this chapter within 18 months after July 1, 2023.

149 Section 2. This Act takes effect July 1, 2023.

SYNOPSIS

Thirty-three states and the District of Columbia have established a process for compensating individuals who have been wrongly convicted. This Act creates such a process for Delaware.