**South Carolina General Assembly**

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**H. 4838**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Norrell, Rutherford and Cobb‑Hunter

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Introduced in the House on February 6, 2018

Currently residing in the House Committee on **Judiciary**

Summary: Wrongful conviction and imprisonment

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/6/2018 House Introduced and read first time ([House Journal‑page 11](file:///h:\hj\20180206.docx))

2/6/2018 House Referred to Committee on **Judiciary** ([House Journal‑page 11](file:///h:\hj\20180206.docx))

3/1/2018 House Member(s) request name added as sponsor: Rutherford

3/21/2018 House Member(s) request name added as sponsor: Cobb‑Hunter

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**VERSIONS OF THIS BILL**

[2/6/2018](file:///p:\pprever\2017-18\4838_20180206.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 22 TO CHAPTER 13, TITLE 24 SO AS TO PROVIDE THAT CERTAIN PERSONS WHO HAVE BEEN WRONGFULLY CONVICTED OF AND IMPRISONED FOR A CRIME MAY RECOVER THE MONETARY VALUE OF THE LOSS SUSTAINED THROUGH THE WRONGFUL CONVICTION AND IMPRISONMENT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The legislature finds that wrongful convictions may be the result of many causes, including eyewitness misidentification, false confessions, improper forensic science, and government misconduct. A convicted person is considered exonerated when the person is later officially declared innocent of the crime. Nationally, there are more than 2,138 persons listed on the National Registry of Exonerations, including seven persons that were convicted in South Carolina.

The legislature also finds that innocent persons who have been wrongly convicted of crimes and subsequently imprisoned have been uniquely victimized, have distinct challenges reentering society, and havedifficulty achieving legal redress due to a variety of substantive and technical obstacles in the law. These individuals deserve an avenue of redress separate and apart from the existing tort remedies to seek compensation for damages from the jurisdiction that convicted and imprisoned them. In light of the injustice of being imprisoned for a crime one did not commit, thirty‑two states, the District of Columbia, and the federal government have adopted compensation statutes for wrongly imprisoned individuals.

The purpose of this act is to ensure that those persons who were wrongfully convicted and imprisoned by the State receive, under appropriate circumstances, compensation.

SECTION 2. Chapter 13, Title 24 of the 1976 Code is amended by adding:

“Article 22

Compensation for a Wrongful Conviction

Section 24‑13‑2310. (A) Any person convicted in a court of the State and imprisoned for one or more crimes of which the person was actually innocent may file a petition for relief pursuant to this article for an award of damages against the State, provided that the requirements of subsections (B) and (C) are met.

(B) To present an actionable claim against the State for wrongful conviction and imprisonment, the petitioner shall allege that the petitioner was convicted of one or more crimes under the laws of the State, was subsequently sentenced to a term of imprisonment, has served all or any part of the sentence, and is innocent of the crime or crimes.

(C) A person only may file a claim for wrongful conviction if the person’s conviction was overturned by a court of competent jurisdiction and the matter has reached final judgment or the person has been pardoned.

Section 24‑13‑2330. (A) A petitioner may file a claim for wrongful conviction to be heard before a judge in the circuit that exercised jurisdiction over the offense. The petitioner shall serve the petition upon the prosecuting authority in the underlying crime or crimes for which the petitioner was incarcerated. The petition shall:

(1) set forth the facts and authority that support the petitioner’s claim; and

(2) state that the petitioner is not disqualified, under the provisions of Section 24‑13‑2340(C), from seeking compensation under this article.

(B) The petitioner must file the petition with the court:

(1) within thirty days after the order vacating a conviction and sentence becomes final if the petitioner’s conviction and sentence is vacated on or after the effective date of this article.

(2) by January 1, 2019, if the petitioner’s conviction and sentence was vacated by an order that became final prior to the effective date of this article.

(C) No later than thirty days after such service, the prosecuting authority shall file with the court an answer that shall either admit that the petitioner is entitled to compensation or deny the petitioner’s claim.

If the prosecuting authority admits that the petitioner is entitled to compensation, the court shall issue a final judgment awarding the petitioner the amount stated in Section 24‑13‑2340(B)(1).

If the prosecuting authority denies that the petitioner is entitled to compensation, then the court shall conduct a trial to determine if the petitioner is entitled to compensation.

(D) Any action against the State under this article shall be tried by the court without a jury; provided that the court, with the consent of all the parties, may order a trial with a jury whose verdict shall have the same effect as if trial by jury had been a matter of right.

Section 24‑13‑2340. (A) The petitioner shall have the burden to prove by clear and convincing evidence that the petitioner was wrongfully convicted.

(B) A petitioner wrongly convicted shall be awarded:

(1) fifteen thousand dollars for each year, or a pro rata amount for the portion of each year, of the incarceration actually served, including time spent incarcerated awaiting trial. However, the award shall not exceed fifty thousand dollars. All awards shall be made from the Wrongful Conviction Compensation Fund; and

(2) reasonable attorneys’ fees not to exceed ten thousand dollars for fees incurred in preparing and prosecuting the claim for the prevailing petitioner. The attorney for the petitioner shall not charge, demand, receive, or collect fees for services rendered in excess of thirty percent of any amount awarded by the circuit court.

(C) A petitioner is not entitled to an award pursuant to this article if the petitioner:

(1) was serving a term of imprisonment for another crime, including crimes under the laws of the United States, concurrently with imprisonment for the crime or crimes for which petitioner was actually innocent; provided that if the petitioner served additional time in prison due to the conviction that is the basis of the petition, then the petitioner shall receive compensation for that portion of the time served in prison during which the petitioner was serving no other sentence;

(2) committed perjury or fabricated evidence or induced another person to commit perjury or fabricate evidence to cause or bring about the conviction at issue;

(3) fabricated evidence or committed or suborned perjury during any proceeding related to the crime for which the petitioner was convicted;

(4) solicited the commission of the crime at issue or any crime factually related to the crime at issue;

(5) conspired to commit the crime at issue or any crime factually related to the crime at issue;

(6) attempted to commit the crime at issue or any crime factually related to the crime at issue;

(7) assisted in the commission of the crime at issue or any crime factually related to the crime at issue; or

(8) assisted any person to avoid apprehension, arrest, or conviction for the crime at issue or any crime factually related to the crime at issue.

(D) Any monies awarded to the petitioner for claims instituted under this article, other than for attorneys’ fees, shall not be subject to any tax by the State or any county, including any income or general excise tax, any law to the contrary notwithstanding.

(E) A compensation award under this article is subject to the payment of child support, including child support arrearages, owed by the petitioner.

(F) An award of compensation under this article is not a finding of wrongdoing against anyone. An award of compensation under this article is not admissible evidence in a civil action that is related to the investigation, prosecution, or conviction that gave rise to the wrongful conviction or imprisonment.

(G) If a court determines that a petitioner was wrongfully convicted and imprisoned, the court shall enter 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 criminal record history.

(H) The acceptance by the petitioner of an award under this article, or of a compromise or settlement of the claim, must be in writing and, unless it is procured by fraud, is final and conclusive on the petitioner, constitutes a complete release of all claims against this State, and is a complete bar to any action in state court by the petitioner against this State based on the same subject matter. However, the acceptance by the petitioner of an award under this article, or of a compromise or settlement of the petitioner’s claim, does not operate as a waiver of, or bar to, any action in federal court against an individual alleged to have been involved in the investigation, prosecution, or conviction that gave rise to the wrongful conviction or imprisonment.

(I) This article shall constitute a waiver of sovereign immunity by the State only for the claims brought pursuant to this article. The State makes no other waiver of sovereign immunity, and fully retains its sovereign immunity as to all other claims, however denominated, that seek compensation of any kind or nature that are a result of, related to, or arise from a conviction and imprisonment for crimes for which the claimant alleges actual innocence. This article shall be broadly construed in favor of the State and against any waiver of sovereign immunity.

(J) This article does not impair or limit the right of a state or local government to collect a debt of a petitioner from the petitioner’s award of compensation under this article.

Section 24‑13‑2360. Review of any final judgment of the circuit court shall be governed by Title 18, Chapter 9.

Section 24‑13‑2370. A petitioner awarded compensation pursuant to this article who is subsequently convicted of a felony is not eligible to receive any unpaid amounts of the award.

Section 24‑13‑2380. There is established in the State Treasury the ‘Wrongful Conviction Compensation Fund’. This fund is separate and distinct from the general fund of the State and all other funds. The fund shall consist of appropriations and donations, contributions, bequests, or other gifts. The proceeds in the fund may only be used to satisfy awards for wrongful convictions. Earnings and interest on this fund must be credited to it and any balance at the end of a fiscal year carries forward to the fund in the succeeding fiscal year.”

SECTION 3. This act takes effect upon approval of the Governor.

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