

West's Annotated Mississippi Code Currentness

Title 11. Civil Practice and Procedure

→ Chapter 44. Compensation to Victims of Wrongful Conviction and Imprisonment

### **§ 11-44-1. Legislative findings and intent**

The Legislature finds that innocent persons who have been wrongly convicted of felony crimes and subsequently imprisoned have been uniquely victimized, have distinct problems reentering society, and should be compensated. In light of the particular and substantial horror of being imprisoned for a crime one did not commit, the Legislature intends by enactment of the provisions of this Chapter that innocent people who are wrongfully convicted be able to receive monetary compensation.

### **§ 11-44-3. Elements to prove claim; dismissal**

(1) In order to present an actionable claim for wrongful conviction and imprisonment under this section, a claimant must establish by documentary evidence that:

(a) The claimant has been convicted of one or more felonies and subsequently sentenced to a term of imprisonment and has served all or any part of the sentence;

(b) On grounds not inconsistent with innocence:

(i) The claimant was pardoned for the felony or felonies for which sentenced and which are the grounds for the complaint and the pardon is based on the innocence of the claimant which must be affirmatively stated in the pardon; or

(ii) The judgment of conviction was vacated and/or reversed;

(c) If there was a vacatur or reversal, either the accusatory instrument was dismissed or nol prossed; or if a new trial was held, the defendant was found not guilty;

(d) The claimant's claim is not time-barred by the provisions of this act; and

(e) The claimant did not intentionally waive any appellate or post-conviction remedy otherwise available in order to benefit under this Chapter.

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

(3) If the court finds after reading the claim that the claimant has not demonstrated the foregoing, it shall dismiss the claim, either on its own motion or on the state's motion. This dismissal shall be without prejudice to allow adequate refiling within ninety (90) days.

### **§ 11-44-5. Jurisdiction; respondent**

Jurisdiction of all claims of wrongful conviction and imprisonment brought under this Chapter shall lie in the circuit court of the county in which the claimant was convicted. The respondent will be the State of Mississippi, which will be represented by the Attorney General's office.

**§ 11-44-7. Burden of proof; damages; attorney's fees; construction with Tort Claims Act; waiver of state immunity**

(1) In order to obtain a judgment under this Chapter, a claimant must prove by a preponderance of the evidence that:

(a) He was convicted of one or more felonies and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and

(i) He has been pardoned for the felony or felonies for which he was sentenced and which are the grounds for the complaint and the pardon is based on the innocence of the claimant which must be affirmatively stated in the pardon; or

(ii) His judgment of conviction was reversed or vacated; and

1. The accusatory instrument was dismissed or nol prossed; or

2. If a new trial was ordered, he was found not guilty at the new trial; and

(b) He did not commit the felony or felonies for which he was sentenced and which are the grounds for the complaint, or the acts or omissions for which he was sentenced did not constitute a felony; and

(c) He did not commit or suborn perjury, or fabricate evidence to bring about his conviction.

(2) If the court finds that the claimant was wrongfully convicted and incarcerated pursuant to subsection (1) of this section, the court shall award:

(a) Fifty Thousand Dollars (\$50,000.00) for each year of incarceration regardless of the number of felonies for which a claimant was convicted, but the total amount for each claimant shall not exceed Five Hundred Thousand Dollars (\$500,000.00). There shall be no compensation for any preindictment detention. This award shall be paid to the claimant in installments of Fifty Thousand Dollars (\$50,000.00) per year until the award is fully paid. The state may purchase an annuity to satisfy this obligation.

(b) Reasonable attorney's fees for bringing a claim under this act calculated at ten percent (10%) of the amount awarded under paragraph (a) of this subsection for preparing and filing the claim, twenty percent (20%) for litigating the claim if it is contested by the Attorney General, and twenty-five percent (25%) if the claim is appealed, plus expenses. These fees shall not be deducted from the compensation due the claimant, nor is counsel entitled to receive additional fees from the client for a claim under this section.

(3) The award shall not be subject to:

(a) Any cap applicable to private parties in civil lawsuits;

(b) Any taxes, except that those portions of the judgment awarded as attorney's fees for bringing a claim under this Chapter shall be taxable as income to the attorney; or

(c) Treatment as gross income to a claimant under the provisions of Title 27, Chapter 7, Mississippi Code of 1972.

(4) A claimant may choose to pursue a claim under this Chapter in lieu of pursuing a claim against the State of Mississippi or a political subdivision thereof under the Mississippi Tort Claims Act, [Section 11-46-1 et seq., Mississippi Code of 1972](#). Any claimant who obtains an award under this Chapter may not obtain an award by reason of the same subject against the State of Mississippi or a political subdivision thereof under the provisions of the Mississippi Tort Claims Act, [Section 11-46-1 et seq., Mississippi Code of 1972](#).

(5) The immunity of the State of Mississippi and any political subdivision thereof is hereby waived with respect to the claims described in this act and within the limits prescribed by this Chapter.

#### **§ 11-44-9. Limitations period**

(1) An action for compensation brought by a wrongfully convicted person under the provisions of this Chapter shall be commenced within three (3) years after either the grant of a pardon or the grant of judicial relief and satisfaction of other conditions described in [Section 11-44-3\(1\)](#); of this act; provided, however, that any action by the state challenging or appealing the grant of said judicial relief shall toll the three-year period. Persons convicted, incarcerated and released from custody prior to July 1, 2009, shall commence an action under this Chapter not later than June 30, 2012.

(2) Notwithstanding any other provision of law, failure to file any applicable Notice of Claim shall not bar filing of a claim under this Chapter.

#### **§ 11-44-11. Right of appeal**

Any party aggrieved by a decision as to a claim brought under this chapter is entitled to appeal the decision as in other civil cases.

#### **§ 11-44-13. Survival of action**

If a claimant dies prior to the full payment of any claim awarded under this chapter, the remaining payments shall be made to his or her estate or heirs. If any potential claimant dies prior to the filing of a claim, the claim may be filed by and on behalf of his or her estate or heirs.

#### **§ 11-44-15. Release**

Any claimant who receives compensation under this chapter shall sign a release from all claims against the state regarding the incarceration for which the claimant receives compensation.

Current through End of the 2009 Regular and 1st to 3rd Extraordinary Sessions  
END OF DOCUMENT