

HOUSE BILL NO. HB0230

Compensation for exoneration based on DNA.

Sponsored by: Representative(s) Pelkey, Baker, Clem and Lindholm and Senator(s) Esquibel, F.

A BILL

for

1 AN ACT relating to criminal procedure; authorizing
2 compensation for persons exonerated based on DNA testing
3 and found factually innocent; specifying conditions,
4 requirements and limitations on authorized compensation;
5 retaining governmental immunity as specified; conforming
6 provisions; providing for stay of order of expungement as
7 specified; providing an appropriation; and providing for an
8 effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 7-12-316 and 7-12-317 are created to
13 read:

14

15 **7-12-316. Compensation.**

1

2 (a) A movant is eligible for compensation as provided
3 in this section if:

4

5 (i) The court entered an order of actual
6 innocence and exoneration pursuant to W.S. 7-12-310(c) or
7 (d);

8

9 (ii) The movant has served in whole or in part a
10 sentence of imprisonment for the conviction for which the
11 order of actual innocence and exoneration was entered;

12

13 (iii) At the time of serving the sentence for
14 which the actual innocence and exoneration order was
15 entered, the movant was not serving and had not been
16 ordered to serve a concurrent or consecutive sentence of
17 imprisonment for a separate conviction; and

18

19 (iv) The court entered findings of fact and
20 conclusions of law establishing factual innocence of the
21 original and related offenses under W.S. 7-12-317.

22

1 (b) Subject to the appropriation of funds by the
2 legislature and other limitations of this section, a movant
3 who meets the eligibility criteria in subsection (a) of
4 this section shall be provided compensation in the amount
5 of one hundred dollars (\$100.00) per day while actually
6 incarcerated not to exceed a total of five hundred thousand
7 dollars (\$500,000.00).

8

9 (c) The office of attorney general shall administer
10 the provision of compensation provided for in this section
11 and may promulgate rules as it deems necessary to implement
12 this section.

13

14 (d) A movant who meets the eligibility criteria
15 established in subsection (a) of this section may present
16 an application not more than two (2) years from entry of
17 the order of actual innocence and exoneration, regardless
18 of whether the order of actual innocence and exoneration
19 was entered before or after July 1, 2015, to the office of
20 the attorney general. If the attorney general determines
21 the movant is eligible for compensation under this section
22 and the amount of the compensation under subsection (b) of
23 this section is equal to or less than fifty thousand

1 dollars (\$50,000.00), payment to the movant shall be made
2 in a lump sum. If the movant is determined eligible for
3 compensation under subsection (b) of this section in excess
4 of fifty thousand dollars (\$50,000.00), the movant shall
5 receive an initial payment of fifty thousand dollars
6 (\$50,000.00) and the remaining amount shall be provided by
7 distributing funds appropriated for purposes of this
8 section to the state treasurer to annuitize the remaining
9 balance. The annuity shall provide equal payments to the
10 movant of fifty thousand dollars (\$50,000.00) annually
11 until the balance has been paid. The annuity shall provide
12 that it shall not be sold, discounted, or used as
13 securitization for loans or mortgages. The annuity may
14 include a beneficiary designated by the movant. In the
15 event the movant dies before the expiration of the two (2)
16 year period for presenting an application, the movant's
17 estate or person claiming to be the distributee of the
18 movant's property as established by affidavit pursuant to
19 W.S. 2-1-201 or district court decree pursuant to W.S.
20 2-1-205 may present an application for the compensation
21 which is authorized to be provided under subsection (b) of
22 this section provided the application is presented within
23 the time specified in this subsection. The estate or

1 distributee shall not be eligible for compensation unless
2 the estate or distributee complies with all provisions and
3 requirements of this section which would have applied to
4 the movant.

5
6 (e) A movant may not receive compensation under this
7 section if he has any action pending, has obtained a
8 judgment or has settled an action or claim against a
9 governmental entity or an employee of any governmental
10 entity involving the conviction for which the order of
11 actual innocence and exoneration was entered.

12
13 (f) Compensation to a movant under this section may
14 not be offset by any expenses incurred by a governmental
15 entity, including expenses to secure custody of the movant
16 and expenses to feed, clothe, house and provide medical
17 care for the movant.

18
19 (g) A movant who receives compensation under this
20 section may not bring any action against any governmental
21 entity or an employee of any governmental entity involving
22 the conviction for which the order of actual innocence and
23 exoneration was entered.

1

2 (h) A movant shall not receive compensation under
3 this section unless the movant signs a release and waiver
4 on behalf of himself and his heirs, successors and assigns,
5 forever releasing all governmental entities and their
6 employees in the employees' official and individual
7 capacity from all present and future claims involving the
8 conviction for which the order of actual innocence and
9 exoneration was entered. The release shall provide that
10 any payment to the movant does not constitute a waiver of
11 sovereign immunity.

12

13 (j) The provisions of the Wyoming Administrative
14 Procedure Act are not applicable to the grant or denial of
15 compensation under this section.

16

17 (k) The payment of compensation under this section
18 does not constitute a waiver of sovereign immunity.

19

20 (m) A movant is not entitled to compensation unless
21 sufficient funds have been appropriated to the office of
22 the attorney general to provide compensation authorized
23 under this section.

1

2 (n) An interest in payment of compensation under this
3 section is not subject to execution or attachment by
4 trustee process or otherwise, in law or equity, or under
5 any other process whatsoever.

6

7 **7-12-317. Establishment of factual innocence.**

8

9 (a) If the court entered an order of actual innocence
10 and exoneration under W.S. 7-12-310, the movant shall be
11 entitled to a hearing to determine whether the movant is
12 factually innocent if the movant files a request for the
13 hearing within sixty (60) days after entry of an order of
14 actual innocence and exoneration. If a request for a
15 factual innocence hearing is timely filed, the court shall
16 conduct a review of all past criminal proceedings involving
17 the movant's original conviction and any new evidence
18 relevant to the movant's claim of factual innocence. If the
19 court finds, by a preponderance of the evidence, that the
20 movant is factually innocent of the original and related
21 offenses, the court shall enter findings of fact and
22 conclusions of law establishing the movant's factual
23 innocence of the original and related offenses. The court

1 shall enter a dispositive order within one hundred fifty
2 (150) days after the motion for a factual innocence hearing
3 is filed.

4

5 (b) For purposes of this section, factual innocence
6 of original and related offenses means the movant did not:

7

8 (i) Engage in conduct for which the movant was
9 convicted;

10

11 (ii) Engage in conduct in connection with the
12 original offense for which the movant was convicted which
13 would constitute a lesser included offense or another
14 felony arising out of the same conduct; or

15

16 (iii) Engage in any conduct which would
17 constitute aiding and abetting, attempt or conspiracy to
18 commit the offense for which the movant was originally
19 convicted or any lesser included offense thereof.

20

21 **Section 2.** W.S. 1-39-104(a), 1-39-120 by creating a
22 new subsection (b), 7-12-303(a) by creating a new paragraph
23 (iii) and by amending and renumbering (iii) as (iv) and

1 7-12-310 by creating new subsections (e) and (f) are
2 amended to read:

3

4 **1-39-104. Granting immunity from tort liability;**
5 **liability on contracts; exceptions.**

6

7 (a) A governmental entity and its public employees
8 while acting within the scope of duties are granted
9 immunity from liability for any tort except as provided by
10 W.S. 1-39-105 through 1-39-112 and limited by W.S.
11 1-39-121. Any immunity in actions based on a contract
12 entered into by a governmental entity is waived except to
13 the extent provided by the contract if the contract was
14 within the powers granted to the entity and was properly
15 executed and except as provided in W.S. 1-39-120(b) and
16 1-39-121. The claims procedures of W.S. 1-39-113 apply to
17 contractual claims against governmental entities.

18

19 **1-39-120. Exclusions from waiver of immunity.**

20

21 (b) Notwithstanding the waiver of immunity for tort
22 liability provided by W.S. 1-39-105 through 1-39-112 or the
23 waiver of immunity in actions based on contract provided by

1 W.S. 1-39-104, a governmental entity and its public
2 employees while acting within the scope of duties are
3 immune from a civil action in tort, contract or otherwise
4 alleging, in whole or in part, improper denial of
5 compensation provided for in W.S. 7-12-316.

6
7 **7-12-303. New trial; motion for post-conviction**
8 **testing of DNA; motion contents; sufficiency of**
9 **allegations, consent to DNA sample; definitions,**
10 **compensation.**

11
12 (a) As used in this act:

13
14 (iii) "Governmental entity" means a governmental
15 entity as defined by W.S. 1-39-103;

16
17 ~~(iii)~~ (iv) "This act" means W.S. 7-12-302 through
18 ~~7-12-315~~ 7-12-317.

19
20 **7-12-310. Order following testing.**

21

1 (e) Subject to subsection (f) of this section, any
2 order of expungement entered pursuant to this section shall
3 be stayed until the later of the following:
4

5 (i) If the movant has applied for compensation
6 under W.S. 7-12-316, until a dispositive order is entered
7 under W.S. 7-12-317 and the time for appeal has expired or,
8 if appealed, upon issuance of a final order or mandate by
9 the Wyoming supreme court; or
10

11 (ii) The time for applying for compensation
12 under W.S. 7-12-316 has expired.
13

14 (f) An order of expungement pursuant to this section
15 shall not be subject to the provisions of subsection (e) of
16 this section if the movant waives all eligibility to
17 receive compensation under W.S. 7-12-316. The waiver shall
18 be filed with the court issuing the order of actual
19 innocence and exoneration.
20

21 **Section 3.** There is appropriated five hundred
22 thousand dollars (\$500,000.00) from the general fund to an
23 account within the auditor's office to be used for payments

1 made pursuant to W.S. 7-12-316. Funds within the account
2 shall be expended as directed by the attorney general in
3 accordance with the provisions of W.S. 7-12-316.
4 Notwithstanding any other provision of law, this
5 appropriation shall not be transferred or expended for any
6 other purpose. Notwithstanding W.S. 9-2-1008, 9-2-1012(e)
7 and 9-4-207, any unexpended, unobligated funds remaining
8 from this appropriation shall not revert until further
9 action of the legislature. This appropriation shall not be
10 included in the auditor's 2017-2018 standard biennial
11 budget request.

12

13 **Section 4.** This act is effective July 1, 2015.

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15

(END)