

SENATE BILL No. 125

By Committee on Judiciary

2-1

1 AN ACT concerning civil actions; relating to wrongful conviction;
2 wrongful execution; compensation.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) A claimant, other than a claimant as defined in section
6 2, and amendments thereto, may bring an action in an appropriate state
7 court seeking damages from the state pursuant to this section and shall be
8 entitled to recover such damages if the claimant establishes the following
9 by clear and convincing evidence:

10 (1) The claimant was convicted of a felony under the Kansas criminal
11 code and served all or any part of their sentence in a state correctional
12 facility;

13 (2) the claimant did not commit the crime which resulted in such
14 conviction; and

15 (3) the claimant did not plead guilty or no contest to the crime which
16 resulted in such conviction.

17 (b) The suit, accompanied by a statement of the facts concerning the
18 claim for damages, verified in the manner provided for in the rules of civil
19 procedure, shall be brought by the claimant within two years after such
20 claimant's release from imprisonment.

21 (c) (1) A claimant entitled to damages pursuant to subsection (a) shall
22 be awarded damages in an amount equal to \$80,000 multiplied by the
23 number of years the claimant was incarcerated, expressed as a fraction to
24 reflect partial years.

25 (2) In addition to such damages, the claimant shall be entitled to
26 receive the costs of the suit, including reasonable attorney fees.

27 (3) Damages, costs and fees awarded pursuant to this section shall be
28 paid from the state general fund.

29 (d) Any award of damages to the claimant in an action against the
30 state or any political subdivision thereof, or against any employee of the
31 state or of any political subdivision thereof, with respect to the same
32 subject matter shall be offset by any award of damages awarded pursuant
33 to this section.

34 Sec. 2. (a) As used in this section, "claimant" means a person
35 convicted of capital murder, as defined in K.S.A. 21-3439, prior to its
36 repeal, or K.S.A. 2016 Supp. 21-5401, and amendments thereto, and

1 sentenced to death, who was wrongfully convicted of such crime.

2 (b) A claimant may bring an action in an appropriate state court
3 seeking damages from the state pursuant to this section and shall be
4 entitled to recover such damages if the claimant establishes the following
5 by clear and convincing evidence:

6 (1) The claimant was convicted of capital murder as defined in
7 K.S.A. 21-3439, prior to its repeal, or K.S.A. 2016 Supp. 21-5401, and
8 amendments thereto, sentenced to death and served all or any part of their
9 sentence;

10 (2) the claimant did not commit the crime which resulted in such
11 conviction;

12 (3) the claimant did not commit or suborn perjury, fabricate evidence
13 or by their own conduct cause or bring about their conviction. Neither a
14 confession or admission later found to be false shall constitute committing
15 or suborning perjury, fabricating evidence or causing or bringing about
16 such conviction under this subsection; and

17 (4) the claimant did not plead guilty to the crime which resulted in
18 such conviction.

19 (c) The suit, accompanied by a statement of the facts concerning the
20 claim for damages, verified in the manner provided for the verification of
21 complaints in civil actions, shall be brought by the claimant within a
22 period of two years after such claimant's release from imprisonment or
23 after the grant of a pardon.

24 (d) (1) A claimant entitled to damages pursuant to subsection (b) shall
25 be awarded damages in the amount of \$1,000,000.

26 (2) The court may order that the award be paid as an annuity with a
27 payout over a maximum period of 20 years. The court shall consider the
28 best interests of the claimant in making such determination.

29 (3) Damages awarded pursuant to this section shall be paid from the
30 state general fund.

31 (e) In addition to the damages awarded pursuant to subsection (d), the
32 claimant shall be entitled to receive reasonable attorney fees and costs
33 related to the litigation. Such fees and costs shall be paid from the state
34 general fund.

35 (f) A person serving a term of imprisonment for a crime other than
36 capital murder as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A.
37 2016 Supp. 21-5401, and amendments thereto, shall not be eligible to file a
38 claim for damages pursuant to this section.

39 (g) Any award of damages to such person in an action against the
40 state or any political subdivision thereof or against any employee of the
41 state or any political subdivision thereof with respect to the same subject
42 matter shall be offset by any award of damages awarded under this section.

43 (h) The provisions of this section shall apply to any claimant released

1 from imprisonment or granted a pardon on or after July 1, 2017.

2 Sec. 3. (a) As used in this section, "claimant" means the heirs, legal
3 representatives or estate of a person convicted of capital murder, as
4 defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2016 Supp. 21-
5 5401, and amendments thereto, and executed pursuant to the provisions of
6 article 40 of chapter 22 of the Kansas Statutes Annotated, and amendments
7 thereto, who was wrongfully convicted of such crime.

8 (b) A claimant may bring an action in an appropriate state court
9 seeking damages from the state pursuant to this section and shall be
10 entitled to recover such damages if the claimant establishes the following
11 by clear and convincing evidence:

12 (1) The person convicted and executed did not commit the crime
13 which resulted in such conviction and execution;

14 (2) the person convicted and executed did not commit or suborn
15 perjury, fabricate evidence or by their own conduct cause or bring about
16 their conviction and execution. Neither a confession or admission later
17 found to be false shall constitute committing or suborning perjury,
18 fabricating evidence or causing or bringing about such conviction and
19 execution under this subsection; and

20 (3) the person convicted and executed did not plead guilty to the
21 crime which resulted in such conviction and execution.

22 (c) The suit, accompanied by a statement of the facts concerning the
23 claim for damages, verified in the manner provided for the verification of
24 complaints in civil actions, shall be brought by the claimant within a
25 period of two years after execution of the person convicted of capital
26 murder.

27 (d) (1) A claimant entitled to damages pursuant to subsection (b) shall
28 be awarded damages in the amount of \$5,000,000.

29 (2) The court may order that the award be paid as an annuity with a
30 payout over a maximum period of 20 years. The court shall consider the
31 best interests of the claimant in making such determination.

32 (3) Damages awarded pursuant to this section shall be paid from the
33 state general fund.

34 (e) In addition to the damages awarded pursuant to subsection (d), the
35 claimant shall be entitled to receive reasonable attorney fees and costs
36 related to the litigation. Such fees and costs shall be paid from the state
37 general fund.

38 (f) Any award of damages to such claimant in an action against the
39 state or any political subdivision thereof or against any employee of the
40 state or any political subdivision thereof with respect to the same subject
41 matter shall be offset by any award of damages awarded under this section.

42 (g) The provisions of this section shall apply to any claimant seeking
43 damages related to an execution occurring on or after July 1, 2017.

1 Sec. 4. This act shall take effect and be in force from and after its
2 publication in the statute book.