



Sen. Elgie R. Sims, Jr.

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10200SB0757sam001

LRB102 04574 LNS 25430 a

1 AMENDMENT TO SENATE BILL 757

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 757 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Court of Claims Act is amended by changing  
5 Section 8 as follows:

6 (705 ILCS 505/8) (from Ch. 37, par. 439.8)

7 Sec. 8. Court of Claims jurisdiction; deliberation  
8 periods. The court shall have exclusive jurisdiction to hear  
9 and determine the following matters:

10 (a) All claims against the State founded upon any law  
11 of the State of Illinois or upon any regulation adopted  
12 thereunder by an executive or administrative officer or  
13 agency; provided, however, the court shall not have  
14 jurisdiction (i) to hear or determine claims arising under  
15 the Workers' Compensation Act or the Workers' Occupational  
16 Diseases Act, or claims for expenses in civil litigation,

1 or (ii) to review administrative decisions for which a  
2 statute provides that review shall be in the circuit or  
3 appellate court.

4 (b) All claims against the State founded upon any  
5 contract entered into with the State of Illinois.

6 (c) All claims against the State for time unjustly  
7 served in prisons of this State when the person imprisoned  
8 received a pardon from the Governor stating that such  
9 pardon is issued on the ground of innocence of the crime  
10 for which he or she was imprisoned or he or she received a  
11 certificate of innocence from the Circuit Court as  
12 provided in Section 2-702 of the Code of Civil Procedure.  
13 The court shall award \$50,000 per year during which the  
14 person was wrongfully imprisoned, including any pretrial  
15 detention period regarding the offense or offenses in  
16 question. In its determination of the award, the court  
17 shall include the number of years the person was  
18 imprisoned while awaiting trial. The court shall make a  
19 separate award of reasonable attorney's fees and costs  
20 expended in connection with obtaining the certificate of  
21 innocence under Section 2-702 of the Code of Civil  
22 Procedure, in the amount previously determined by the  
23 Circuit Court. The ; provided, the amount of the award is  
24 at the discretion of the court; and provided, the court  
25 shall make no award in excess of the following amounts:  
26 for imprisonment of 5 years or less, not more than

1 ~~\$85,350; for imprisonment of 14 years or less but over 5~~  
2 ~~years, not more than \$170,000; for imprisonment of over 14~~  
3 ~~years, not more than \$199,150; and provided further, the~~  
4 ~~court shall fix attorney's fees not to exceed 25% of the~~  
5 ~~award granted. On or after the effective date of this~~  
6 ~~amendatory Act of the 95th General Assembly, the court~~  
7 shall annually adjust the maximum awards authorized by  
8 this subsection (c) to reflect the increase, if any, in  
9 the Consumer Price Index For All Urban Consumers for the  
10 previous calendar year, as determined by the United States  
11 Department of Labor, except that no annual increment may  
12 exceed 5%. For the annual adjustments, if the Consumer  
13 Price Index decreases during a calendar year, there shall  
14 be no adjustment for that calendar year. The transmission  
15 by the Prisoner Review Board or the clerk of the circuit  
16 court of the information described in Section 11(b) to the  
17 clerk of the Court of Claims is conclusive evidence of the  
18 validity of the claim. The changes made by Public Act  
19 95-970 ~~this amendatory Act of the 95th General Assembly~~  
20 apply to all claims pending on or filed on or after  
21 September 22, 2008 (the effective date of Public Act  
22 95-970). The changes made by this amendatory Act of the  
23 102nd General Assembly apply to all claims pending on or  
24 filed on or after the effective date.

25 (d) All claims against the State for damages in cases  
26 sounding in tort, if a like cause of action would lie

1 against a private person or corporation in a civil suit,  
2 and all like claims sounding in tort against the Medical  
3 Center Commission, the Board of Trustees of the University  
4 of Illinois, the Board of Trustees of Southern Illinois  
5 University, the Board of Trustees of Chicago State  
6 University, the Board of Trustees of Eastern Illinois  
7 University, the Board of Trustees of Governors State  
8 University, the Board of Trustees of Illinois State  
9 University, the Board of Trustees of Northeastern Illinois  
10 University, the Board of Trustees of Northern Illinois  
11 University, the Board of Trustees of Western Illinois  
12 University, or the Board of Trustees of the Illinois  
13 Mathematics and Science Academy; provided, that an award  
14 for damages in a case sounding in tort, other than certain  
15 cases involving the operation of a State vehicle described  
16 in this paragraph, shall not exceed the sum of \$2,000,000  
17 to or for the benefit of any claimant. The \$2,000,000  
18 limit prescribed by this Section does not apply to an  
19 award of damages in any case sounding in tort arising out  
20 of the operation by a State employee of a vehicle owned,  
21 leased or controlled by the State. The defense that the  
22 State or the Medical Center Commission or the Board of  
23 Trustees of the University of Illinois, the Board of  
24 Trustees of Southern Illinois University, the Board of  
25 Trustees of Chicago State University, the Board of  
26 Trustees of Eastern Illinois University, the Board of

1 Trustees of Governors State University, the Board of  
2 Trustees of Illinois State University, the Board of  
3 Trustees of Northeastern Illinois University, the Board of  
4 Trustees of Northern Illinois University, the Board of  
5 Trustees of Western Illinois University, or the Board of  
6 Trustees of the Illinois Mathematics and Science Academy  
7 is not liable for the negligence of its officers, agents,  
8 and employees in the course of their employment is not  
9 applicable to the hearing and determination of such  
10 claims. The changes to this Section made by this  
11 amendatory Act of the 100th General Assembly apply only to  
12 claims filed on or after July 1, 2015.

13 The court shall annually adjust the maximum awards  
14 authorized by this subsection to reflect the increase, if  
15 any, in the Consumer Price Index For All Urban Consumers  
16 for the previous calendar year, as determined by the  
17 United States Department of Labor. The Comptroller shall  
18 make the new amount resulting from each annual adjustment  
19 available to the public via the Comptroller's official  
20 website by January 31 of every year.

21 (e) All claims for recoupment made by the State of  
22 Illinois against any claimant.

23 (f) All claims pursuant to the Line of Duty  
24 Compensation Act. A claim under that Act must be heard and  
25 determined within one year after the application for that  
26 claim is filed with the Court as provided in that Act.

1           (g) All claims filed pursuant to the Crime Victims  
2           Compensation Act.

3           (h) All claims pursuant to the Illinois National  
4           Guardsmen's Compensation Act. A claim under that Act must  
5           be heard and determined within one year after the  
6           application for that claim is filed with the Court as  
7           provided in that Act.

8           (i) All claims authorized by subsection (a) of Section  
9           10-55 of the Illinois Administrative Procedure Act for the  
10          expenses incurred by a party in a contested case on the  
11          administrative level.

12         (Source: P.A. 100-1124, eff. 11-27-18.)

13          Section 10. The Code of Civil Procedure is amended by  
14          changing Section 2-702 as follows:

15                 (735 ILCS 5/2-702)

16                 Sec. 2-702. Petition for a certificate of innocence that  
17                 the petitioner was innocent of all offenses for which he or she  
18                 was incarcerated.

19                 (a) The General Assembly finds and declares that innocent  
20                 persons who have been wrongly convicted of crimes in Illinois  
21                 and subsequently imprisoned have been frustrated in seeking  
22                 legal redress due to a variety of substantive and technical  
23                 obstacles in the law and that such persons should have an  
24                 available avenue to obtain a finding of innocence so that they

1 may obtain relief through a petition in the Court of Claims.  
2 The General Assembly further finds misleading the current  
3 legal nomenclature which compels an innocent person to seek a  
4 pardon for being wrongfully incarcerated. It is the intent of  
5 the General Assembly that the court, in exercising its  
6 discretion as permitted by law regarding the weight and  
7 admissibility of evidence submitted pursuant to this Section,  
8 shall, in the interest of justice, give due consideration to  
9 difficulties of proof caused by the passage of time, the death  
10 or unavailability of witnesses, the destruction of evidence or  
11 other factors not caused by such persons or those acting on  
12 their behalf.

13 (b) Any person convicted and subsequently imprisoned for  
14 one or more felonies by the State of Illinois which he or she  
15 did not commit may, under the conditions hereinafter provided,  
16 file a petition for certificate of innocence in the circuit  
17 court of the county in which the person was convicted. The  
18 petition shall request a certificate of innocence finding that  
19 the petitioner was innocent of all offenses for which he or she  
20 was incarcerated.

21 (c) In order to present the claim for certificate of  
22 innocence of an unjust conviction and imprisonment, the  
23 petitioner must attach to his or her petition documentation  
24 demonstrating that:

25 (1) he or she has been convicted of one or more  
26 felonies by the State of Illinois and subsequently

1 sentenced to a term of imprisonment, and has served all or  
2 any part of the sentence; and

3 (2) his or her judgment of conviction was reversed or  
4 vacated, and the indictment or information dismissed or,  
5 if a new trial was ordered, either he or she was found not  
6 guilty at the new trial or he or she was not retried and  
7 the indictment or information dismissed; or the statute,  
8 or application thereof, on which the indictment or  
9 information was based violated the Constitution of the  
10 United States or the State of Illinois; and

11 (3) his or her claim is not time barred by the  
12 provisions of subsection (i) of this Section.

13 (d) The petition shall state facts in sufficient detail to  
14 permit the court to find that the petitioner is likely to  
15 succeed at trial in proving that the petitioner is innocent of  
16 the offenses charged in the indictment or information or his  
17 or her acts or omissions charged in the indictment or  
18 information did not constitute a felony or misdemeanor against  
19 the State of Illinois, and the petitioner did not by his or her  
20 own conduct voluntarily cause or bring about his or her  
21 conviction. The petition shall be verified by the petitioner.

22 (e) A copy of the petition shall be served on the Attorney  
23 General and the State's Attorney of the county where the  
24 conviction was had. The Attorney General and the State's  
25 Attorney of the county where the conviction was had shall have  
26 the right to intervene as parties.

1 (f) In any hearing seeking a certificate of innocence, the  
2 court may take judicial notice of prior sworn testimony or  
3 evidence admitted in the criminal proceedings related to the  
4 convictions which resulted in the alleged wrongful  
5 incarceration, if the petitioner was either represented by  
6 counsel at such prior proceedings or the right to counsel was  
7 knowingly waived.

8 (g) In order to obtain a certificate of innocence the  
9 petitioner must prove by a preponderance of evidence that:

10 (1) the petitioner was convicted of one or more  
11 felonies by the State of Illinois and subsequently  
12 sentenced to a term of imprisonment, and has served all or  
13 any part of the sentence;

14 (2) (A) the judgment of conviction was reversed or  
15 vacated, and the indictment or information dismissed or,  
16 if a new trial was ordered, either the petitioner was  
17 found not guilty at the new trial or the petitioner was not  
18 retried and the indictment or information dismissed; or

19 (B) the statute, or application thereof, on which the  
20 indictment or information was based violated the  
21 Constitution of the United States or the State of  
22 Illinois;

23 (3) the petitioner is innocent of the offenses charged  
24 in the indictment or information or his or her acts or  
25 omissions charged in the indictment or information did not  
26 constitute a felony or misdemeanor against the State; and

1           (4) the petitioner did not by his or her own conduct  
2 voluntarily cause or bring about his or her conviction.

3           (h) If the court finds that the petitioner is entitled to a  
4 judgment, it shall enter a certificate of innocence finding  
5 that the petitioner was innocent of all offenses for which he  
6 or she was incarcerated. Upon entry of the certificate of  
7 innocence or pardon from the Governor stating that such pardon  
8 was issued on the ground of innocence of the crime for which he  
9 or she was imprisoned, (1) the clerk of the court shall  
10 transmit a copy of the certificate of innocence to the clerk of  
11 the Court of Claims, together with the claimant's current  
12 address; and (2) the court shall enter an order expunging the  
13 record of arrest from the official records of the arresting  
14 authority and order that the records of the clerk of the  
15 circuit court and Department of State Police be sealed until  
16 further order of the court upon good cause shown or as  
17 otherwise provided herein, and the name of the defendant  
18 obliterated from the official index requested to be kept by  
19 the circuit court clerk under Section 16 of the Clerks of  
20 Courts Act in connection with the arrest and conviction for  
21 the offense but the order shall not affect any index issued by  
22 the circuit court clerk before the entry of the order. The  
23 court shall enter the expungement order regardless of whether  
24 the petitioner has prior criminal convictions.

25           Upon the motion of the petitioner and according to proof,  
26 the court shall make a determination on the record of

1 reasonable attorney's fees and costs expended in connection  
2 with obtaining the certificate of innocence under this  
3 Section. No attorney shall accept a fee in excess of that  
4 amount for representing a petitioner in connection with  
5 obtaining a certificate of innocence under this Section.

6 All records sealed by the Department of State Police may  
7 be disseminated by the Department only as required by law or to  
8 the arresting authority, the State's Attorney, the court upon  
9 a later arrest for the same or similar offense, or for the  
10 purpose of sentencing for any subsequent felony. Upon  
11 conviction for any subsequent offense, the Department of  
12 Corrections shall have access to all sealed records of the  
13 Department pertaining to that individual.

14 Upon entry of the order of expungement, the clerk of the  
15 circuit court shall promptly mail a copy of the order to the  
16 person whose records were expunged and sealed.

17 (i) Any person seeking a certificate of innocence under  
18 this Section based on the dismissal of an indictment or  
19 information or acquittal that occurred before the effective  
20 date of this amendatory Act of the 95th General Assembly shall  
21 file his or her petition within 2 years after the effective  
22 date of this amendatory Act of the 95th General Assembly. Any  
23 person seeking a certificate of innocence under this Section  
24 based on the dismissal of an indictment or information or  
25 acquittal that occurred on or after the effective date of this  
26 amendatory Act of the 95th General Assembly shall file his or

1 her petition within 2 years after the dismissal.

2 (j) The decision to grant or deny a certificate of  
3 innocence shall be binding only with respect to claims filed  
4 in the Court of Claims and shall not have a res judicata effect  
5 on any other proceedings.

6 (Source: P.A. 98-133, eff. 1-1-14.)".