



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB4447

by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

20 ILCS 605/605-416 new	
705 ILCS 505/8	from Ch. 37, par. 439.8
705 ILCS 505/11	from Ch. 37, par. 439.11
705 ILCS 505/22	from Ch. 37, par. 439.22
705 ILCS 505/24	from Ch. 37, par. 439.24
705 ILCS 505/24.5 new	
735 ILCS 5/2-702 new	

Amends the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois. Provides that the Department of Commerce and Economic Opportunity shall establish an individualized job training and continuing education program for a person released from prison who was wrongfully accused of a crime for which he or she was imprisoned and was either pardoned by the Governor on the ground of innocence or granted a certificate of innocence by the circuit court. Amends the Court of Claims Act. Increases the maximum statutory awards for a person released from prison who was wrongfully accused of a crime for which he or she was imprisoned and was either pardoned by the Governor on the ground of innocence or granted a certificate of innocence by the circuit court. Amends the Code of Civil Procedure. Provides that a person imprisoned for a felony that he or she did not commit may, under certain conditions, file a petition for a certificate of innocence in the circuit court and sets forth criteria for granting a certificate of innocence. Effective immediately.

LRB095 14146 RLC 40009 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning imprisonment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Department of Commerce and Economic
5 Opportunity Law of the Civil Administrative Code of Illinois is
6 amended by adding Section 605-416 as follows:

7 (20 ILCS 605/605-416 new)

8 Sec. 605-416. Persons unjustly imprisoned; job training
9 and continuing education. The Department shall establish an
10 individualized job training and continuing education program
11 for each person if he or she has been discharged from a prison
12 of this State; and if he or she has been wrongfully accused of
13 a crime for which he or she was imprisoned; and if the person
14 received a pardon from the Governor stating that such pardon is
15 issued on the ground of innocence of the crime for which he or
16 she was imprisoned or he or she has received a certificate of
17 innocence from the Circuit Court as provided in Section 2-702
18 of the Code of Civil Procedure.

19 Section 10. The Court of Claims Act is amended by changing
20 Sections 8, 11, 22, and 24 and by adding Section 24.5 as
21 follows:

1 (705 ILCS 505/8) (from Ch. 37, par. 439.8)

2 Sec. 8. Court of Claims jurisdiction. The court shall have
3 exclusive jurisdiction to hear and determine the following
4 matters:

5 (a) All claims against the State founded upon any law of
6 the State of Illinois or upon any regulation adopted thereunder
7 by an executive or administrative officer or agency; provided,
8 however, the court shall not have jurisdiction (i) to hear or
9 determine claims arising under the Workers' Compensation Act or
10 the Workers' Occupational Diseases Act, or claims for expenses
11 in civil litigation, or (ii) to review administrative decisions
12 for which a statute provides that review shall be in the
13 circuit or appellate court.

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

16 (c) All claims against the State for time unjustly served
17 in prisons of this State when ~~where~~ the person ~~persons~~
18 imprisoned was wrongfully accused of the crime for which he or
19 she was imprisoned and the accused received ~~shall receive~~ a
20 pardon from the governor stating that such pardon is issued on
21 the ground of innocence of the crime for which he or she was
22 ~~they were~~ imprisoned or he or she received a certificate of
23 innocence from the Circuit Court as provided in Section 2-702
24 of the Code of Civil Procedure; provided, the amount of the
25 award is at the discretion of the court; and provided, the
26 court shall make no award in excess of the following amounts:

1 for imprisonment of 5 years or less, not more than \$85,350
2 ~~\$15,000~~; for imprisonment of 14 years or less but over 5 years,
3 not more than \$170,000 ~~\$30,000~~; for imprisonment of over 14
4 years, not more than \$199,150 ~~\$35,000~~; and provided further,
5 the court shall fix attorney's fees not to exceed 25% of the
6 award granted. On or after the effective date of this
7 amendatory Act of the 95th General Assembly, ~~On December 31,~~
8 ~~1996,~~ the court shall make a one time adjustment in the maximum
9 awards authorized by this subsection (c), to reflect the
10 increase in the cost of living from the year in which these
11 maximum awards were last adjusted until 1996, but with no
12 annual increment exceeding 5%. Thereafter, the court shall
13 annually adjust the maximum awards authorized by this
14 subsection (c) to reflect the increase, if any, in the Consumer
15 Price Index For All Urban Consumers for the previous calendar
16 year, as determined by the United States Department of Labor,
17 except that no annual increment may exceed 5%. For ~~both~~ the
18 ~~one time adjustment and the subsequent~~ annual adjustments, if
19 the Consumer Price Index decreases during a calendar year,
20 there shall be no adjustment for that calendar year. The
21 changes made by this amendatory Act of the 95th General
22 Assembly apply to all claims pending on or filed on or after
23 the effective date. ~~The changes made by Public Act 89-689 apply~~
24 ~~to all claims filed on or after January 1, 1995 that are~~
25 ~~pending on December 31, 1996 and all claims filed on or after~~
26 ~~December 31, 1996.~~

1 (d) All claims against the State for damages in cases
2 sounding in tort, if a like cause of action would lie against a
3 private person or corporation in a civil suit, and all like
4 claims sounding in tort against the Medical Center Commission,
5 the Board of Trustees of the University of Illinois, the Board
6 of Trustees of Southern Illinois University, the Board of
7 Trustees of Chicago State University, the Board of Trustees of
8 Eastern Illinois University, the Board of Trustees of Governors
9 State University, the Board of Trustees of Illinois State
10 University, the Board of Trustees of Northeastern Illinois
11 University, the Board of Trustees of Northern Illinois
12 University, the Board of Trustees of Western Illinois
13 University, or the Board of Trustees of the Illinois
14 Mathematics and Science Academy; provided, that an award for
15 damages in a case sounding in tort, other than certain cases
16 involving the operation of a State vehicle described in this
17 paragraph, shall not exceed the sum of \$100,000 to or for the
18 benefit of any claimant. The \$100,000 limit prescribed by this
19 Section does not apply to an award of damages in any case
20 sounding in tort arising out of the operation by a State
21 employee of a vehicle owned, leased or controlled by the State.
22 The defense that the State or the Medical Center Commission or
23 the Board of Trustees of the University of Illinois, the Board
24 of Trustees of Southern Illinois University, the Board of
25 Trustees of Chicago State University, the Board of Trustees of
26 Eastern Illinois University, the Board of Trustees of Governors

1 State University, the Board of Trustees of Illinois State
2 University, the Board of Trustees of Northeastern Illinois
3 University, the Board of Trustees of Northern Illinois
4 University, the Board of Trustees of Western Illinois
5 University, or the Board of Trustees of the Illinois
6 Mathematics and Science Academy is not liable for the
7 negligence of its officers, agents, and employees in the course
8 of their employment is not applicable to the hearing and
9 determination of such claims.

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

12 (f) All claims pursuant to the Line of Duty Compensation
13 Act.

14 (g) All claims filed pursuant to the Crime Victims
15 Compensation Act.

16 (h) All claims pursuant to the Illinois National
17 Guardsman's Compensation Act.

18 (i) All claims authorized by subsection (a) of Section
19 10-55 of the Illinois Administrative Procedure Act for the
20 expenses incurred by a party in a contested case on the
21 administrative level.

22 (Source: P.A. 93-1047, eff. 10-18-04.)

23 (705 ILCS 505/11) (from Ch. 37, par. 439.11)

24 Sec. 11. Filing claims.

25 (a) Except as otherwise provided in subsection (b) of this

1 Section and subsection (3) of Section 24, the claimant shall in
2 all cases set forth fully in his petition the claim, the action
3 thereon, if any, on behalf of the State, what persons are
4 owners thereof or interested therein, when and upon what
5 consideration such persons became so interested; that no
6 assignment or transfer of the claim or any part thereof or
7 interest therein has been made, except as stated in the
8 petition; that the claimant is justly entitled to the amount
9 therein claimed from the State of Illinois, after allowing all
10 just credits; and that claimant believes the facts stated in
11 the petition to be true. The petition shall be verified, as to
12 statements of facts, by the affidavit of the claimant, his
13 agent, or attorney.

14 (b) Whenever a person has served a term of imprisonment and
15 has received a pardon by the Governor stating that such pardon
16 was issued on the ground of innocence of the crime for which he
17 or she was imprisoned, or a certificate of innocence from the
18 Circuit Court as provided in Section 2-702 of the Code of Civil
19 Procedure, the Governor shall transmit this information to the
20 clerk of the Court of Claims. The clerk of the Court of Claims
21 shall immediately docket the case for consideration by the
22 Court of Claims. The Court of Claims shall hear the case and
23 render a decision within 90 days after its docketing. The
24 transmission by the Governor of the information described in
25 this subsection (b) to the clerk of the Court of Claims is
26 conclusive evidence of the validity of the claim.

1 (Source: Laws 1945, p. 660.)

2 (705 ILCS 505/22) (from Ch. 37, par. 439.22)

3 Sec. 22. Every claim cognizable by the Court and not
4 otherwise sooner barred by law shall be forever barred from
5 prosecution therein unless it is filed with the Clerk of the
6 Court within the time set forth as follows:

7 (a) All claims arising out of a contract must be filed
8 within 5 years after it first accrues, saving to minors, and
9 persons under legal disability at the time the claim accrues,
10 in which cases the claim must be filed within 5 years from the
11 time the disability ceases.

12 (b) All claims cognizable against the State by vendors of
13 goods or services under "The Illinois Public Aid Code",
14 approved April 11, 1967, as amended, must file within one year
15 after the accrual of the cause of action, as provided in
16 Section 11-13 of that Code.

17 (c) All claims arising under paragraph (c) of Section 8 of
18 this Act must be automatically heard by the court ~~filed~~ within
19 120 days ~~2 years~~ after the person unjustly imprisoned ~~asserting~~
20 ~~such claim~~ is discharged from prison without the person
21 unjustly imprisoned being required to file a petition under
22 Section 11 of this Act, ~~or is granted a pardon by the Governor,~~
23 ~~whichever occurs later, except as otherwise provided by the~~
24 ~~Crime Victims Compensation Act.~~

25 (d) All claims arising under paragraph (f) of Section 8 of

1 this Act must be filed within one year of the date of the death
2 of the law enforcement officer or fireman as provided in
3 Section 3 of the "Law Enforcement Officers and Firemen
4 Compensation Act", approved September 30, 1969, as amended.

5 (e) All claims arising under paragraph (h) of Section 8 of
6 this Act must be filed within one year of the date of the death
7 of the guardsman or militiaman as provided in Section 3 of the
8 "Illinois National Guardsman's and Naval Militiaman's
9 Compensation Act", approved August 12, 1971, as amended.

10 (f) All claims arising under paragraph (g) of Section 8 of
11 this Act must be filed within one year of the crime on which a
12 claim is based as provided in Section 6.1 of the "Crime Victims
13 Compensation Act", approved August 23, 1973, as amended.

14 (g) All claims arising from the Comptroller's refusal to
15 issue a replacement warrant pursuant to Section 10.10 of the
16 State Comptroller Act must be filed within 5 years after the
17 issue date of such warrant.

18 (h) All other claims must be filed within 2 years after it
19 first accrues, saving to minors, and persons under legal
20 disability at the time the claim accrues, in which case the
21 claim must be filed within 2 years from the time the disability
22 ceases.

23 (i) The changes made by this amendatory Act of 1989 shall
24 apply to all warrants issued within the 5 year period preceding
25 the effective date of this amendatory Act of 1989.

26 (j) All time limitations established under this Act and the

1 rules promulgated under this Act shall be binding and
2 jurisdictional, except upon extension authorized by law or rule
3 and granted pursuant to a motion timely filed.

4 (Source: P.A. 86-458.)

5 (705 ILCS 505/24) (from Ch. 37, par. 439.24)

6 Sec. 24. Payment of awards.

7 (1) From funds appropriated by the General Assembly for the
8 purposes of this Section the Court may direct immediate payment
9 of:

10 (a) All claims arising solely as a result of the
11 lapsing of an appropriation out of which the obligation
12 could have been paid.

13 (b) All claims pursuant to the "Law Enforcement
14 Officers and Firemen Compensation Act", approved September
15 30, 1969, as amended.

16 (c) All claims pursuant to the "Illinois National
17 Guardsman's and Naval Militiaman's Compensation Act",
18 approved August 12, 1971, as amended.

19 (d) All claims pursuant to the "Crime Victims
20 Compensation Act", approved August 23, 1973, as amended.

21 (e) All other claims wherein the amount of the award of
22 the Court is less than \$5,000.

23 (2) The court may, from funds specifically appropriated
24 from the General Revenue Fund for this purpose, direct the
25 payment of awards less than \$50,000 solely as a result of the

1 lapsing of an appropriation originally made from any fund held
2 by the State Treasurer. For any such award paid from the
3 General Revenue Fund, the court shall thereafter seek an
4 appropriation from the fund from which the liability originally
5 accrued in reimbursement of the General Revenue Fund.

6 (3) From funds appropriated by the General Assembly for the
7 purposes of paying claims under paragraph (c) of Section 8, the
8 court must direct payment of each claim and the payment must be
9 received by the claimant within 60 days after the date that the
10 funds are appropriated for that purpose.

11 (Source: P.A. 92-357, eff. 8-15-01.)

12 (705 ILCS 505/24.5 new)

13 Sec. 24.5. Applicability. This amendatory Act of the 95th
14 General Assembly shall apply to causes of action filed on or
15 after its effective date.

16 Section 15. The Code of Civil Procedure is amended by
17 adding Section 2-702 as follows:

18 (735 ILCS 5/2-702 new)

19 Sec. 2-702. Petition for a certificate of innocence that
20 the petitioner was innocent of all offenses for which he or she
21 was incarcerated.

22 (a) The General Assembly finds and declares that innocent
23 persons who have been wrongly convicted of crimes in Illinois

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

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

25 (c) In order to present the claim for certificate of
26 innocence of an unjust conviction and imprisonment, the

1 petitioner must attach to his or her petition documentation
2 demonstrating that:

3 (1) he or she has been convicted of one or more
4 felonies by the State of Illinois and subsequently
5 sentenced to a term of imprisonment, and has served all or
6 any part of the sentence; and

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

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

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

26 (e) A copy of the petition shall be served on the Attorney

1 General and the State's Attorney of the county where the
2 conviction was had. The Attorney General and the State's
3 Attorney of the county where the conviction was had shall have
4 the right to intervene as parties.

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

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

14 (1) the petitioner was convicted of one or more
15 felonies by the State of Illinois and subsequently
16 sentenced to a term of imprisonment, and has served all or
17 any part of the sentence;

18 (2) (A) the judgment of conviction was reversed or
19 vacated, and the indictment or information dismissed or, if
20 a new trial was ordered, either the petitioner was found
21 not guilty at the new trial or the petitioner was not
22 retried and the indictment or information dismissed; or (B)
23 the statute, or application thereof, on which the
24 indictment or information was based violated the
25 Constitution of the United States or the State of Illinois;

26 (3) the petitioner is innocent of the offenses charged

1 in the indictment or information or his or her acts or
2 omissions charged in the indictment or information did not
3 constitute a felony or misdemeanor against the State; and

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

6 (h) If the court finds that the petitioner is entitled to a
7 judgment, it shall enter a certificate of innocence finding
8 that the petitioner was innocent of all offenses for which he
9 or she was incarcerated.

10 (i) Any person seeking a certificate of innocence under
11 this Section based on the dismissal of an indictment or
12 information or acquittal that occurred before the effective
13 date of this amendatory Act of the 95th General Assembly shall
14 file his or her petition within 2 years after the effective
15 date of this amendatory Act of the 95th General Assembly. Any
16 person seeking a certificate of innocence under this Section
17 based on the dismissal of an indictment or information or
18 acquittal that occurred on or after the effective date of this
19 amendatory Act of the 95th General Assembly shall file his or
20 her petition within 2 years after the dismissal.

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

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.