

1 **H. B. 4552**

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3 (By Delegates Hunt, Sponaugle, Wells and Manypenny)
4 [Introduced February 14, 2014; referred to the
5 Committee on the Judiciary then Finance.]
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10 A BILL to amend and reenact §14-2-1, §14-2-8, §14-2-13, §14-2-13a,
11 §14-2-16, §14-2-25 and §14-2-28 of the code of West Virginia,
12 1931, as amended, all relating to the court of claims;
13 clarifying purpose of article; increaseing salaries of the
14 judges; authorizing additional days of judges reimbursement;
15 revising court jurisdiction; revising process for innocent
16 persons who have been wrongly convicted to file a claim;
17 authorizing hiring expert witness by court; abolishing
18 advisory determination procedure; and clarifying actions of
19 Court not subject to judicial review.

20 *Be it enacted by the Legislature of West Virginia:*

21 That §14-2-1, §14-2-8, §14-2-13, §14-2-13a, §14-2-16, §14-2-25
22 and §14-2-28 of the Code of West Virginia, 1931, as amended, be
23 amended and reenacted to read as follows:

24 **ARTICLE 2. CLAIMS AGAINST THE STATE.**

1 **§14-2-1. Purpose.**

2 The purpose of this article is to provide a simple and
3 ~~expeditious~~ impartial method for the consideration of claims
4 against the state that because of the provisions of section
5 thirty-five, article VI of the Constitution of the State, and of
6 statutory restrictions, inhibitions or limitations, cannot be
7 determined in the regular courts of the state; and to provide for
8 proceedings in which the state has a special interest.

9 **§14-2-8. Compensation of judges; expenses.**

10 Each judge of the court shall receive \$210 for each day
11 actually served and expenses incurred in the performance of his or
12 her duties paid at the same per diem rate as members of the
13 Legislature: *Provided*, That the ~~presiding~~ chief judge shall receive
14 an additional ~~\$50~~ \$40 for each day actually served. In addition to
15 the expense per diem, each judge may, when using his or her own
16 vehicle, be reimbursed for mileage at the mileage rate equal to the
17 amount paid by the travel management office of the Department of
18 Administration. The number of days served by each judge shall not
19 exceed one hundred twenty in any fiscal year, except by authority
20 of the Joint Committee on Government and Finance: *Provided*, That in
21 computing the number of days served, days utilized solely for the
22 exercise of duties assigned to judges and commissioners by the
23 provisions of article two-a of this chapter shall be disregarded.
24 For the purpose of this section, time served shall include time

1 spent in the hearing of claims, in the consideration of the record,
2 in the preparation of opinions and in necessary travel.

3 **§14-2-13. Jurisdiction of the court.**

4 The jurisdiction of the court, except for the claims excluded
5 by section fourteen, shall extend to the following matters:

6 1. Claims and demands, liquidated and unliquidated, ex
7 contractu and ex delicto, against the state or any of its agencies,
8 which the state as a sovereign commonwealth should in equity and
9 good conscience discharge and pay.

10 2. Claims and demands, liquidated and unliquidated, ex
11 contractu and ex delicto, which may be asserted in the nature of
12 set-off or counterclaim on the part of the state or any state
13 agency.

14 ~~3. The legal or equitable status, or both, of any claim~~
15 ~~referred to the court by the head of a state agency for an advisory~~
16 ~~determination.~~

17 **§14-2-13a. Claims for unjust arrest and imprisonment or**
18 **conviction and imprisonment.**

19 (a) *Legislative intent* -- The Legislature finds and declares
20 that innocent persons who have been wrongly convicted of crimes and
21 subsequently imprisoned and innocent persons wrongly arrested,
22 charged with a crime or imprisoned, who have subsequently been
23 released when another person was arrested, prosecuted and convicted

1 of the same criminal offense have been frustrated in seeking legal
2 redress due to a variety of substantive and technical obstacles in
3 the law and that ~~such~~ affected persons should have an available
4 avenue of redress over and above the existing tort remedies.
5 Therefore, the Legislature intends by enactment of the provisions
6 of this section that those innocent persons who can demonstrate
7 that they were wrongly arrested and imprisoned or unjustly
8 convicted and imprisoned are able to seek damages against the state
9 for loss of liberty. ~~to seek compensation for damages. The~~
10 ~~Legislature intends by enactment of the provisions of this section~~
11 ~~that those innocent persons who can demonstrate by clear and~~
12 ~~convincing evidence that they were unjustly arrested and imprisoned~~
13 ~~or unjustly convicted and imprisoned be able to recover damages~~
14 ~~against the state. In light of the substantial burden of proof that~~
15 ~~must be carried by such persons, it is the intent of the~~
16 ~~Legislature that the court, in exercising its discretion as~~
17 ~~permitted by law regarding the weight and admissibility of evidence~~
18 ~~submitted pursuant to this section, shall, in the interest of~~
19 ~~justice, give due consideration to difficulties of proof caused by~~
20 ~~the passage of time, the death or unavailability of witnesses, the~~
21 ~~destruction of evidence or other factors not caused by such persons~~
22 ~~or those acting on their behalf.~~

23 (b) ~~Any person arrested or imprisoned or convicted and~~
24 ~~subsequently imprisoned for one or more felonies or misdemeanors~~

1 ~~against the state which he did not commit may, under the conditions~~
2 ~~hereinafter provided, present a claim for damages against the~~
3 ~~state. Notice of Claim -- The claimant's notice of claim shall~~
4 ~~state facts in sufficient detail to permit the court to find that~~
5 ~~a claimant is likely to succeed at a trial on the merits. If the~~
6 ~~court finds in its discretion after reviewing a claim that the~~
7 ~~claimant has failed to allege sufficient facts upon which relief~~
8 ~~can be granted, the court may dismiss the claim, either on its own~~
9 ~~motion or by a motion of the state.~~

10 (c) ~~In order to present the claim for unjust arrest or~~
11 ~~imprisonment, claimant must establish by documentary evidence that~~
12 ~~he has been arrested and imprisoned, or both arrested and~~
13 ~~imprisoned and charged by warrant, information or indictment for~~
14 ~~one or more felonies against the state and that subsequently~~
15 ~~another person was arrested or prosecuted and convicted for the~~
16 ~~same criminal offense or offenses and all charges against the~~
17 ~~claimant were dismissed. Burden of Proof -- A claimant shall~~
18 ~~demonstrate by clear and convincing evidence that they were~~
19 ~~unjustly arrested and imprisoned or unjustly convicted and~~
20 ~~imprisoned, and the court shall, in the interest of justice, give~~
21 ~~due consideration to difficulties of proof caused by the passage of~~
22 ~~time, the death or unavailability of witnesses, the destruction of~~
23 ~~evidence or other factors not caused by such persons or those~~
24 ~~acting on their behalf. Specifically, the following shall be proven~~

1 by clear and convincing evidence:

2 (1) (A) The claimant has been convicted of one or more
3 felonies or misdemeanors against the state and subsequently
4 sentenced to a term of confinement, and has served all or any part
5 of the sentence; or

6 (B) The claimant has been arrested and confined, and charged
7 by warrant, information, or any other accusatory instrument for one
8 or more felonies or misdemeanors, and that the charges were
9 dismissed against the claimant; when another person was
10 subsequently charged, arrested, and convicted of the same felony or
11 felonies, or misdemeanors, or;

12 (2) (A) Another person was subsequently charged, arrested and
13 convicted of the same felony or felonies or misdemeanors;

14 (B) The claimant has been pardoned upon the ground of
15 innocence of the crime or crimes for which the claimant was
16 sentenced and which are the grounds for the complaint; or

17 (C) The claimant's judgment of conviction was reversed or
18 vacated, and the accusatory instrument dismissed or, if a new trial
19 was ordered, either the claimant was found not guilty at the new
20 trial or the claimant was not retried and the accusatory instrument
21 dismissed; and

22 (3) The claimant did not by his or her own conduct cause or
23 bring about his or her conviction.

24 ~~(d) In order to present the claim for unjust arrest,~~

~~1 imprisonment or conviction and imprisonment, claimant must
2 establish by documentary evidence that (1) he has been convicted of
3 one or more felonies or misdemeanors against the state and
4 subsequently sentenced to a term of imprisonment, and has served
5 all or any part of the sentence; and (2) he has been pardoned upon
6 the ground of innocence of the crime or crimes for which he was
7 sentenced and which are the grounds for the complaint; or (3) his
8 judgment of conviction was reversed or vacated, and the accusatory
9 instrument dismissed or, if a new trial was ordered, either he was
10 found not guilty at the new trial or he was not retried and the
11 accusatory instrument dismissed; or (4) the statute, or application
12 thereof, on which the accusatory instrument was based violated the
13 Constitution of the United States or the State of West Virginia;
14 and (5) his claim is not time barred by the provisions of
15 subdivision (h) of this section.~~

~~16 (e) The claim shall state facts in sufficient detail to permit
17 the court to find that claimant is likely to succeed at trial in
18 proving that (1) in the case of an unjust arrest or imprisonment
19 with a warrant, information or indictment which was subsequently
20 dismissed that another person was arrested or prosecuted and
21 convicted for the same offense or offenses, and (2) in the case of
22 an unjust conviction and imprisonment that he did not commit any of
23 the acts charged in the accusatory instrument or his acts or
24 omissions charged in the accusatory instrument did not constitute~~

1 ~~a felony or misdemeanor against the state, and (3) he did not by~~
2 ~~his own conduct cause or bring about his conviction. The claim~~
3 ~~shall be verified. If the court finds after reading the claim that~~
4 ~~claimant is not likely to succeed at trial, it shall dismiss the~~
5 ~~claim, either on its own motion or on the motion of the state.~~

6 ~~(f) In order to obtain a judgment in his favor, claimant must~~
7 ~~prove by clear and convincing evidence that:~~

8 ~~(1) He has been arrested and imprisoned, or both arrested and~~
9 ~~imprisoned, and charged by warrant, information or indictment for~~
10 ~~one or more felonies, and that the charges were dismissed against~~
11 ~~him when another person was subsequently charged, arrested and~~
12 ~~convicted of the same felony or felonies;~~

13 ~~(2) He has been convicted of one or more felonies or~~
14 ~~misdemeanors against the state and subsequently sentenced to a term~~
15 ~~of imprisonment, and has served all or any part of the sentence; or~~

16 ~~(3) (A) He has been pardoned upon the ground of innocence of~~
17 ~~the crime or crimes for which he was sentenced and which are the~~
18 ~~grounds for the complaint; or (B) his judgment of conviction was~~
19 ~~reversed or vacated, and the accusatory instrument dismissed or, if~~
20 ~~a new trial was ordered, either he was found not guilty at the new~~
21 ~~trial or he was not retried and the accusatory instrument~~
22 ~~dismissed; or (C) the statute, or application thereof, on which the~~
23 ~~accusatory instrument was based violated the Constitution of the~~
24 ~~United States or the State of West Virginia;~~

1 ~~(4) He did not commit any of the acts charged in the~~
2 ~~accusatory instrument or his acts or omissions charged in the~~
3 ~~accusatory instrument did not constitute a felony or misdemeanor~~
4 ~~against the state; and~~

5 ~~(5) He did not by his own conduct cause or bring about his~~
6 ~~conviction.~~

7 ~~(g) If the court finds that the claimant is entitled to a~~
8 ~~judgment, it shall award damages in such sum of money as the court~~
9 ~~determines will fairly and reasonably compensate him.~~

10 ~~(h) Any person claiming compensation under this section based~~
11 ~~on a pardon that was granted before the effective date of this~~
12 ~~section or the dismissal of an accusatory instrument that occurred~~
13 ~~before the effective date of this section shall file his claim~~
14 ~~within two years after the effective date of this section. Any~~
15 ~~person claiming compensation under this section based on a pardon~~
16 ~~that was granted on or after the effective date of this section or~~
17 ~~the dismissal of an accusatory instrument that occurred on or after~~
18 ~~the effective date of this section shall file his claim within two~~
19 ~~years after the pardon or dismissal.~~

20 ~~(i) Any person claiming compensation under this section based~~
21 ~~on the dismissal of a felony charge or charges against him when~~
22 ~~another person is subsequently charged, arrested and convicted of~~
23 ~~the same felony charge or charges based upon a dismissal of the~~
24 ~~felony charge or charges that occurred before the effective date of~~

1 ~~this section shall file his claim within one year after the~~
2 ~~effective date of this section.~~

3 (d) Type of Relief Granted and the Claimant's Burden to Prove

4 Damages -- If the court finds that the claimant is entitled to a

5 judgment, the court shall award damages in a sum of money as the

6 court determines will fairly and reasonably compensate the claimant

7 based upon the sufficiency of the claimant's proof at trial.

8 Whether the damages fairly and reasonably compensate the claimant

9 will depend upon the unique facts and circumstances of each claim.

10 The claimant shall bear the ultimate burden of proving all damages

11 associated with the claimant's claim.

12 **§14-2-16. Regular procedure.**

13 The regular procedure for the consideration of claims shall be
14 substantially as follows:

15 1. The claimant shall give notice to the clerk that he or she
16 desires to maintain a claim. Notice shall be in writing and shall
17 be in sufficient detail to identify the claimant, the circumstances
18 giving rise to the claim, and the state agency concerned, if any.
19 The claimant shall not otherwise be held to any formal requirement
20 of notice.

21 2. The clerk shall transmit a copy of the notice to the state
22 agency concerned. The state agency may deny the claim, or may
23 request a postponement of proceedings to permit negotiations with
24 the claimant. If the court finds that a claim is prima facie within

1 its jurisdiction, it shall order the claim to be placed upon its
2 regular docket for hearing.

3 3. During the period of negotiations and pending hearing, the
4 state agency, represented by the Attorney General, shall, if
5 possible, reach an agreement with the claimant regarding the facts
6 upon which the claim is based so as to avoid the necessity for the
7 introduction of evidence at the hearing. If the parties are unable
8 to agree upon the facts an attempt shall be made to stipulate the
9 questions of fact in issue.

10 4. The court shall so conduct the hearing as to disclose all
11 material facts and issues of liability and may examine or
12 cross-examine witnesses. The court may call witnesses or require
13 evidence not produced by the parties; the court may call expert
14 witnesses and compensate those experts for their services in an
15 amount not to exceed \$3,500 per expert; the court may stipulate the
16 questions to be argued by the parties; and the court may continue
17 the hearing until some subsequent time to permit a more complete
18 presentation of the claim.

19 5. After the close of the hearing the court shall consider the
20 claim and shall conclude its determination, if possible, within
21 ~~thirty~~ sixty days.

22 **§14-2-25. Reports of the court.**

23 The clerk shall be the official reporter of the court. He or
24 she shall collect and edit the approved claims, awards and

1 statements, shall prepare them for submission to the Legislature in
2 the form of an annual report and shall prepare them for
3 publication.

4 Claims and awards shall be separately classified as follows:

5 1. Approved claims and awards not satisfied but referred to
6 the Legislature for final consideration and appropriation.

7 2. Approved claims and awards satisfied by payments out of
8 regular appropriations.

9 3. Approved claims and awards satisfied by payment out of a
10 special appropriation made by the Legislature to pay claims arising
11 during the fiscal year.

12 4. Claims rejected by the court with the reasons therefor.

13 ~~5. Advisory determinations made at the request of the Governor~~
14 ~~or the head of a state agency.~~

15 The court may include any other information or recommendations
16 pertaining to the performance of its duties.

17 The court shall transmit its annual report to the presiding
18 officer of each house of the Legislature, and a copy shall be made
19 available to any member of the Legislature upon request therefor.

20 The reports of the court shall be published biennially by the clerk
21 as a public document. The biennial report shall be filed with the
22 clerk of each house of the Legislature, the Governor and the
23 Attorney General.

24 **§14-2-28. Award as condition precedent to appropriation.**

1 (a) It is the policy of the Legislature to make no
2 appropriation to pay any claims against the state, cognizable by
3 the court, unless the claim has first been passed upon by the
4 court.

5 (b) Because a decision of the court is a recommendation to the
6 Legislature based upon a finding of moral obligation, and the
7 enactment process of passage of legislation authorizing payments of
8 claims recommended by the court is at legislative discretion, no
9 right of appeal exists to findings and award recommendations of the
10 court of claims in any other court of this state.

NOTE: This bill is by request of the court of claims; clarifying purpose of article; increases salaries of the judges; authorizing additional days of judges reimbursement; revising court jurisdiction; revising process for innocent persons who have been wrongly convicted to file a claim; authoring hiring expert witness by court; abolishing advisory determination procedure; and clarifying the authority of the court.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.