

AMENDMENTS TO LB 260

Introduced by Judiciary.

1           1. Strike the original sections and insert the following  
2 new sections:

3           Section 1. Sections 1 to 12 of this act shall be known  
4 and may be cited as the Nebraska Claims for Wrongful Conviction and  
5 Imprisonment Act.

6           Sec. 2. The Legislature finds that innocent persons who  
7 have been wrongly convicted of crimes and subsequently imprisoned  
8 have been uniquely victimized, have distinct problems reentering  
9 society, and have difficulty achieving legal redress due to a  
10 variety of substantive and technical obstacles in the law. The  
11 Legislature also finds that such persons should have an available  
12 avenue of redress. In light of the particular and substantial  
13 horror of being imprisoned for a crime one did not commit,  
14 the Legislature intends by enactment of the Nebraska Claims for  
15 Wrongful Conviction and Imprisonment Act that persons who can  
16 demonstrate that they were wrongfully convicted shall immediately  
17 receive services upon release as provided in section 6 of this  
18 act and persons who can meet the higher standard of proving their  
19 actual innocence shall be able to receive monetary compensation.

20           Sec. 3. In order to present an actionable claim for  
21 wrongful conviction and imprisonment, a claimant must verify the  
22 claim and establish by documentary evidence that:

23           (1) He or she has been convicted of one or more felony

1 crimes and subsequently sentenced to a term of imprisonment for  
2 such felony crime or crimes and has served all or any part of the  
3 sentence;

4 (2) Due to exoneration based upon actual innocence:

5 (a) He or she was pardoned for the crime or crimes for  
6 which he or she was sentenced on grounds which are the basis for  
7 the complaint;

8 (b) The statute on which the information or indictment  
9 was based violated the United States Constitution or the  
10 Constitution of Nebraska;

11 (c) The judgment of conviction was vacated; or

12 (d) The judgment of conviction was reversed;

13 (3) If there was a vacatur or reversal, either the  
14 information or indictment was dismissed or, if a new trial was  
15 held, the defendant was found not guilty;

16 (4) His or her claim is not time-barred by section 9 of  
17 this act; and

18 (5) He or she is or was not concurrently imprisoned for  
19 any felony crime or crimes for which a valid judgment of conviction  
20 exists or existed.

21 Sec. 4. All claims seeking recovery under the Nebraska  
22 Claims for Wrongful Conviction and Imprisonment Act from the state  
23 shall be filed with the State Claims Board in the manner provided  
24 in the State Tort Claims Act. All claims seeking recovery under the  
25 Nebraska Claims for Wrongful Conviction and Imprisonment Act from a  
26 political subdivision shall be filed in the manner provided in the  
27 Political Subdivisions Tort Claims Act.

1           Sec. 5. To obtain a judgment in his or her favor, a  
2 claimant must prove by clear and convincing evidence:

3           (1) The elements required under section 3 of this act;

4           (2) That he or she did not commit any of the crimes  
5 charged in the information or indictment; and

6           (3) That he or she did not commit or suborn perjury,  
7 fabricate evidence, or otherwise make a false statement to cause  
8 or bring about his or her conviction or the conviction of another.

9 However, neither a confession or admission, coerced by a wrongful  
10 act by an employee of the state or a political subdivision,  
11 and later found to be false, nor a guilty plea to a crime the  
12 claimant did not commit, constitutes bringing about his or her own  
13 conviction under the Nebraska Claims for Wrongful Conviction and  
14 Imprisonment Act.

15           Sec. 6. If the State Claims Board or a court finds that  
16 the claimant was wrongfully convicted and incarcerated pursuant to  
17 section 3 of this act, the court may award:

18           (1) Damages for the physical injury of wrongful  
19 conviction and incarceration which shall be not less than  
20 twenty-five thousand dollars for each year of incarceration, with  
21 an additional twenty-five thousand dollars for each year served on  
22 death row. This amount shall reflect:

23           (a) An adjustment for inflation from the date of  
24 enactment by the method provided in section 151 of the Internal  
25 Revenue Code of 1986, as amended, and partial years the claimant  
26 served; and

27           (b) Consideration of:

1           (i) Economic damages, including, but not limited to:

2           (A) Lost wages;

3           (B) Costs associated with his or her criminal defense and  
4 efforts to prove innocence; and

5           (C) Medical and dental expenses incurred or expected to  
6 be incurred after release;

7           (ii) Noneconomic damages for:

8           (A) Personal physical injuries or physical sickness; and

9           (B) Any nonphysical injuries or sickness incurred during  
10 or as a result of incarceration;

11           (2) Up to five years of physical and mental health care  
12 through the state employees group health insurance program, to  
13 be offset by any amount provided through the claimant's employer  
14 during that time period;

15           (3) Reimbursement for any tuition and fees paid for  
16 the education of the claimant at any community college in this  
17 state, any state college in this state, or the University of  
18 Nebraska, including any necessary assistance to meet the criteria  
19 required therefor, or a mutually agreed upon vocational program,  
20 and employment skills development training;

21           (4) Compensation for child support payments owed by the  
22 claimant that became due and interest on child support arrearages  
23 that accrued during the time served in prison but were not paid;

24           (5) Compensation for any reasonable costs incurred by  
25 the claimant for immediate services secured upon exoneration  
26 and release, including housing, transportation and subsistence,  
27 reintegrative services, and mental and physical health care costs

1 incurred by the claimant for the time period between his or her  
2 release from wrongful incarceration and the date of his or her  
3 award; and

4 (6) Reasonable attorney's fees for bringing a claim under  
5 the Nebraska Claims for Wrongful Conviction and Incarceration Act,  
6 calculated at ten percent of the damage award plus expenses.  
7 Reasonable attorney's fees, exclusive of expenses, shall not exceed  
8 seventy-five thousand dollars. Such fees shall not be deducted from  
9 the compensation due the claimant, and the claimant's counsel is  
10 not entitled to receive additional fees from the claimant.

11 Sec. 7. (1) The damage award under section 6 of this act  
12 shall not be subject to:

13 (a) Any state taxes, except for those portions of the  
14 judgment awarded as attorney's fees for bringing a claim under the  
15 Nebraska Claims for Wrongful Conviction and Imprisonment Act; or

16 (b) Treatment as gross income to a claimant under the  
17 Nebraska Revenue Act of 1967.

18 (2) The damage award shall not be offset by any expenses  
19 incurred by the state or any political subdivision, including, but  
20 not limited to:

21 (a) Expenses incurred:

22 (i) To secure the claimant's custody; or

23 (ii) To feed, clothe, or provide medical services for the  
24 claimant; or

25 (b) The value of any services or reduction in fees for  
26 service, or the value thereof, to be provided to the claimant that  
27 may be awarded to the claimant pursuant to the act.

1           (3) If the court finds that any property of the claimant  
2 was subjected to a lien pursuant to defense services rendered by  
3 the state to defend the client in connection with the criminal case  
4 that resulted in his or her wrongful conviction, the court shall  
5 extinguish the lien.

6           Sec. 8. (1) The Board of Pardons, upon the issuance of  
7 a full pardon on or after the effective date of this act, shall  
8 provide a copy of the Nebraska Claims for Wrongful Conviction and  
9 Imprisonment Act at the time the pardon is issued to the individual  
10 pardoned. The individual shall acknowledge, in writing, his or  
11 her receipt of a copy of the act on a form established by the  
12 board, which acknowledgement shall be retained on file by the board  
13 as part of its official records and shall be admissible in any  
14 proceeding filed by a claimant under the act.

15           (2) In the event a claimant granted a full pardon on  
16 or after the effective date of this act shows he or she did not  
17 receive a copy of the information required by this section, he or  
18 she shall receive a one-year extension on the three-year statute of  
19 limitations provided in section 9 of this act.

20           Sec. 9. A claim for compensation brought under the  
21 Nebraska Claims for Wrongful Conviction and Imprisonment Act shall  
22 be filed within two years after either the grant of a pardon or the  
23 grant of judicial relief. Any action by the state challenging or  
24 appealing the grant of such judicial relief shall toll the two-year  
25 period. Persons convicted, incarcerated, and released from custody  
26 prior to the effective date of this act shall file a claim under  
27 the act within three years after the effective date of this act.

1           Sec. 10. Either party to an action for compensation  
2 brought under the Nebraska Claims for Wrongful Conviction and  
3 Imprisonment Act is entitled to the rights of appeal afforded  
4 parties in a civil action.

5           Sec. 11. (1) Any person convicted and subsequently  
6 imprisoned for one or more crimes who, on the grounds of actual  
7 innocence, is either pardoned or whose conviction is reversed or  
8 vacated on the basis of newly discovered evidence, and either  
9 the charges are dismissed or he or she is subsequently retried  
10 and acquitted, shall receive up to two years of immediate  
11 services needed upon release, including, but not limited to:  
12 Housing; secondary or postsecondary education; vocational training;  
13 transportation; subsistence monetary assistance; reintegrative  
14 services; and mental, physical, and dental health care. The need  
15 for these services shall be determined through a review by the  
16 Department of Health and Human Services and provided by the  
17 appropriate state entities or political subdivisions.

18           (2) When a conviction is vacated, a judge may order that  
19 services similar to those in this section be provided.

20           Sec. 12. (1) Upon obtaining a postconviction exoneration  
21 for actual innocence through either a pardon based on innocence  
22 from an erroneous felony conviction or a judicial order vacating or  
23 reversing an erroneous felony conviction, a person may petition the  
24 district court in which the erroneous felony conviction occurred  
25 for an order to expunge all records of the erroneous felony  
26 conviction. The petition shall be accompanied by a certified  
27 copy of the pardon or judicial order vacating or reversing the

1 erroneous felony conviction. The petitioner shall serve a copy of  
2 the petition on the county attorney of the county in which the  
3 erroneous felony conviction occurred. If the county attorney files  
4 no objection to the petition, the court may grant the petition.

5 (2) If the county attorney files an objection to the  
6 petitioner's request for expunging the criminal record of the  
7 erroneous felony conviction, the court shall conduct a hearing on  
8 the matter.

9 (3) If a court determines that the petition is warranted  
10 and orders the expunction of all records pertaining to the  
11 petitioner's erroneous felony conviction, a law enforcement agency  
12 may gain access to such person's expunged records only with a court  
13 order upon good cause showing that access to the expunged records  
14 is required for the performance of official law enforcement duties.

15 (4) If a court determines that the petition is warranted  
16 and orders the expunction of all records pertaining to the  
17 petitioner's erroneous felony conviction, the court shall notify  
18 the Nebraska State Patrol and any other law enforcement agency to  
19 expunge all records pertaining to the petitioner's erroneous felony  
20 conviction.

21 (5) The Nebraska State Patrol, any other law enforcement  
22 agency involved, and the court shall provide written notice of the  
23 expunction by certified mail to the petitioner.

24 (6) A person who obtains a court order to expunge all  
25 records pertaining to such person's erroneous felony conviction may  
26 lawfully answer and swear under oath that an arrest, prosecution,  
27 or conviction pertaining to the erroneous conviction never

1 occurred.

2 (7) Any party may appeal a final order granting or

3 denying the expunction of records pertaining to the erroneous

4 felony conviction.