

By Senator Joyner

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1                   A bill to be entitled  
2           An act relating to compensation for wrongful  
3           incarceration; amending s. 961.02, F.S.; defining the  
4           term "actual innocence" for purposes of the Victims of  
5           Wrongful Incarceration Compensation Act; redefining  
6           the term "wrongfully incarcerated person" in order to  
7           conform; amending s. 961.03, F.S.; requiring that a  
8           petition for compensation include clear and convincing  
9           evidence of actual innocence; requiring the petitioner  
10          to submit fingerprints for criminal history records  
11          checks; providing procedures for taking and submitting  
12          fingerprints; requiring that the results of the  
13          criminal history records checks be submitted to the  
14          clerk of the court; providing for use of the results  
15          by the court; amending s. 961.05, F.S.; eliminating  
16          the requirement that a wrongfully incarcerated person  
17          provide certain court records and documentation from  
18          the Department of Corrections along with an  
19          application for compensation; requiring the Department  
20          of Legal Affairs to request certain records from the  
21          clerk of the court and the Department of Corrections;  
22          amending s. 961.06, F.S.; precluding submission of an  
23          application for compensation if the wrongfully  
24          incarcerated person has received a prior favorable  
25          judgment from a civil action arising out of the  
26          wrongful incarceration; providing an effective date.

27  
28   Be It Enacted by the Legislature of the State of Florida:  
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30 Section 1. Section 961.02, Florida Statutes, is amended to  
31 read:

32 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

33 (1) "Act" means the Victims of Wrongful Incarceration  
34 Compensation Act.

35 (2) "Actual innocence" means that a person did not commit  
36 the act or the offense that served as the basis for the  
37 conviction and incarceration for which the person seeks  
38 compensation, and that the person did not aid, abet, or act as  
39 an accomplice to a person who committed the act or offense.

40 (3)~~(2)~~ "Department" means the Department of Legal Affairs.

41 (4)~~(3)~~ "Division" means the Division of Administrative  
42 Hearings.

43 (5)~~(4)~~ "Wrongfully incarcerated person" means a person  
44 whose felony conviction and sentence have been vacated by a  
45 court of competent jurisdiction and, with respect to whom  
46 pursuant to the requirements of s. 961.03, the original  
47 sentencing court has issued its order finding that the person  
48 has proven actual innocence by clear and convincing evidence  
49 ~~neither committed the act nor the offense that served as the~~  
50 ~~basis for the conviction and incarceration and that the person~~  
51 ~~did not aid, abet, or act as an accomplice or accessory to a~~  
52 ~~person who committed the act or offense.~~

53 (6)~~(5)~~ "Eligible for compensation" means a person meets the  
54 definition of "wrongfully incarcerated person" and is not  
55 disqualified from seeking compensation under the criteria  
56 prescribed in s. 961.04.

57 (7)~~(6)~~ "Entitled to compensation" means a person meets the  
58 definition of "eligible for compensation" and satisfies the

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59 application requirements prescribed in s. 961.05, and may  
60 receive compensation pursuant to s. 961.06.

61 Section 2. Section 961.03, Florida Statutes, is amended to  
62 read:

63 961.03 Determination of status as a wrongfully incarcerated  
64 person; determination of eligibility for compensation.—

65 (1) (a) In order to meet the definition of a "wrongfully  
66 incarcerated person" and "eligible for compensation," upon entry  
67 of an order, based upon exonerating evidence, vacating a  
68 conviction and sentence, a person must set forth the claim of  
69 wrongful incarceration under oath and with particularity by  
70 filing a petition with the original sentencing court, with a  
71 copy of the petition and proper notice to the prosecuting  
72 authority in the underlying felony for which the person was  
73 incarcerated. At a minimum, the petition must:

74 1. State that clear and convincing ~~verifiable and~~  
75 ~~substantial~~ evidence of actual innocence exists and state with  
76 particularity the nature and significance of the clear and  
77 convincing ~~verifiable and substantial~~ evidence of actual  
78 innocence; and

79 2. State that the person is not disqualified, under ~~the~~  
80 ~~provisions of~~ s. 961.04, from seeking compensation under this  
81 act.

82 (b) The person must file the petition with the court:

83 1. Within 90 days after the order vacating a conviction and  
84 sentence becomes final if the person's conviction and sentence  
85 is vacated on or after July 1, 2008.

86 2. By July 1, 2010, if the person's conviction and sentence  
87 was vacated by an order that became final prior to July 1, 2008.

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88       (c)1. After filing the petition, the petitioner must submit  
89 fingerprints for a state and national criminal history records  
90 check.

91       2. The clerk of the court shall inform the petitioner of  
92 the process for having his or her fingerprints taken and  
93 submitted and provide information concerning law enforcement  
94 agencies or service providers that are authorized to submit  
95 fingerprints electronically to the Department of Law  
96 Enforcement.

97       3. The petitioner's fingerprints shall be taken in a manner  
98 approved by the Department of Law Enforcement and shall be  
99 submitted electronically to the Department of Law Enforcement  
100 for state processing for a criminal history records check. The  
101 Department of Law Enforcement shall submit the fingerprints to  
102 the Federal Bureau of Investigation for national processing. The  
103 Department of Law Enforcement shall submit the results of the  
104 state and national records check to the clerk of the court. The  
105 court shall consider the results in evaluating whether the  
106 petitioner is eligible for compensation under s. 961.04.

107       4. The petitioner may not be charged for the cost of  
108 conducting the state and national criminal history records  
109 checks required under this paragraph.

110       (2) The prosecuting authority must respond to the petition  
111 within 30 days. The prosecuting authority may respond:

112       (a) By certifying to the court that, based upon the  
113 petition and ~~verifiable and substantial~~ evidence of actual  
114 innocence, no further criminal proceedings in the case at bar  
115 can or will be initiated by the prosecuting authority, and that  
116 the prosecuting authority does not contest ~~no questions of fact~~

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117 ~~remain as to the petitioner's actual innocence wrongful~~  
118 ~~incarceration, and that the petitioner is not ineligible from~~  
119 ~~seeking compensation under the provisions of s. 961.04; or~~

120 (b) By certifying to the court that questions of fact  
121 remain as to the petitioner's actual innocence, and that the  
122 prosecuting authority contests ~~contesting~~ the nature,  
123 significance, or effect of the evidence of actual innocence, ~~the~~  
124 ~~facts related to the petitioner's alleged wrongful~~  
125 ~~incarceration, or whether the petitioner is ineligible from~~  
126 ~~seeking compensation under the provisions of s. 961.04.~~

127 (3) If the prosecuting authority responds as set forth in  
128 paragraph (2) (a), the original sentencing court, based upon the  
129 prosecuting authority's certification and the court's finding  
130 that the petitioner has proven actual innocence by clear and  
131 convincing evidence and that the petitioner is eligible for  
132 compensation under s. 961.04 ~~evidence of actual innocence, the~~  
133 ~~prosecuting authority's certification, and upon the court's~~  
134 ~~finding that the petitioner has presented clear and convincing~~  
135 ~~evidence that the petitioner committed neither the act nor the~~  
136 ~~offense that served as the basis for the conviction and~~  
137 ~~incarceration, and that the petitioner did not aid, abet, or act~~  
138 ~~as an accomplice to a person who committed the act or offense,~~  
139 shall certify to the department that the petitioner is a  
140 wrongfully incarcerated person who is eligible for compensation  
141 as defined by this act. Based upon the prosecuting authority's  
142 ~~certification, the court shall also certify to the department~~  
143 ~~that the petitioner is eligible for compensation under the~~  
144 ~~provisions of s. 961.04.~~

145 (4) (a) If the prosecuting authority responds as set forth

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146 in paragraph (2) (b), the original sentencing court shall make a  
147 determination from the pleadings and supporting documentation  
148 whether, ~~by a preponderance of the evidence,~~ the petitioner is  
149 eligible ~~ineligible~~ for compensation under ~~the provisions of s.~~  
150 961.04, regardless of his or her claim of wrongful  
151 incarceration. If the court finds the petitioner ineligible  
152 under ~~the provisions of s. 961.04,~~ it shall dismiss the  
153 petition.

154 (b) If the prosecuting authority responds as set forth in  
155 paragraph (2) (b), and the court determines that the petitioner  
156 is eligible under ~~the provisions of s. 961.04,~~ but the  
157 prosecuting authority contests the nature, significance, or  
158 effect of the evidence of actual innocence, ~~or the facts related~~  
159 ~~to the petitioner's alleged wrongful incarceration,~~ the court  
160 shall set forth its findings and transfer the petition to the  
161 division for findings of fact and a recommended determination of  
162 whether the petitioner has proven actual innocence ~~established~~  
163 ~~that he or she is a wrongfully incarcerated person who is~~  
164 ~~eligible for compensation~~ under this act.

165 (5) The petitioner must prove actual innocence before the  
166 administrative law judge by clear and convincing evidence. ~~Any~~  
167 ~~questions of fact, the nature, significance or effect of the~~  
168 ~~evidence of actual innocence, and the petitioner's eligibility~~  
169 ~~for compensation under this act must be established by clear and~~  
170 ~~convincing evidence by the petitioner before an administrative~~  
171 ~~law judge.~~

172 (6) (a) Pursuant to division rules and any additional rules  
173 set forth by the administrative law judge, a hearing shall be  
174 conducted no later than 120 days after the transfer of the

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175 petition to the division.

176 (b) The prosecuting authority shall appear for the purpose  
177 of contesting, as necessary, the facts, the nature, and  
178 significance or effect of the evidence of actual innocence as  
179 presented by the petitioner.

180 (c) No later than 45 days after the adjournment of the  
181 hearing, the administrative law judge shall issue an order  
182 setting forth his or her findings and recommendation and shall  
183 file the order with the original sentencing court.

184 (d) The original sentencing court shall review the findings  
185 and recommendation contained in the order of the administrative  
186 law judge and, within 60 days, shall issue its own order  
187 adopting or declining to adopt the findings and recommendation  
188 of the administrative law judge.

189 (7) If the court concludes that the petitioner is a  
190 wrongfully incarcerated person as defined by this act and is  
191 eligible for compensation as defined in this act, the court  
192 shall include in its order a certification to the department  
193 that:

194 (a)1. The order of the administrative law judge finds that  
195 the petitioner has met his or her burden of proving actual  
196 innocence ~~establishing~~ by clear and convincing evidence ~~that the~~  
197 ~~petitioner committed neither the act nor the offense that served~~  
198 ~~as the basis for the conviction and incarceration and that the~~  
199 ~~petitioner did not aid, abet, or act as an accomplice to a~~  
200 ~~person who committed the act or offense;~~

201 2. The findings and recommendation of the administrative  
202 law judge on which its order is based are supported by  
203 competent, substantial evidence; and

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204 3. The petitioner is a wrongfully incarcerated person who  
205 is eligible for compensation; or

206 (b)2. That The court has declined to adopt the findings and  
207 recommendation recommendations of the administrative law judge  
208 that the petitioner failed to prove actual innocence by clear  
209 and convincing evidence and finds that the petitioner has met  
210 his or her burden of proving actual innocence ~~establishing~~ by  
211 clear and convincing evidence, and that the petitioner is a  
212 wrongfully incarcerated person who is eligible for compensation.

213 ~~that the petitioner committed neither the act nor the offense~~  
214 ~~that served as the basis for the conviction and incarceration~~  
215 ~~and that the petitioner did not aid, abet, or act as an~~  
216 ~~accomplice to a person who committed the act or offense; and~~

217 ~~(b) The original sentencing court determines the findings~~  
218 ~~and recommendations on which its order is based are supported by~~  
219 ~~competent, substantial evidence.~~

220 (8) The establishment of the method by which a person may  
221 seek the status of a wrongfully incarcerated person and a  
222 finding as to eligibility for compensation under this act in no  
223 way creates any rights of due process beyond those set forth in  
224 this act herein, nor is there created any right to further  
225 petition or appeal beyond the scope of the method set forth in  
226 this act herein.

227 Section 3. Section 961.05, Florida Statutes, is amended to  
228 read:

229 961.05 Application for compensation for wrongful  
230 incarceration; administrative expunction; determination of  
231 entitlement to compensation.—

232 (1) A wrongfully incarcerated person who is eligible for



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233 compensation as defined in this act must initiate his or her  
234 application for compensation as required in this section no more  
235 than 2 years after the original sentencing court enters its  
236 order finding that the person meets the definition of a  
237 wrongfully incarcerated person and is eligible for compensation  
238 as defined in this act.

239 (2) A wrongfully incarcerated person who is eligible for  
240 compensation under the act must apply to the Department of Legal  
241 Affairs. No estate of, or personal representative for, a  
242 decedent is entitled to apply on behalf of the decedent for  
243 compensation for wrongful incarceration.

244 (3) The Department of Legal Affairs may adopt rules  
245 regarding the forms and procedures related to applications for  
246 compensation under this act ~~the Victims of Wrongful~~  
247 ~~Incarceration Compensation Act.~~

248 (4) The application must include:

249 (a) Identification of the original sentencing court and the  
250 criminal case number of the case or cases for which the person  
251 was wrongfully incarcerated ~~A certified copy of the order~~  
252 ~~vacating the conviction and sentence;~~

253 ~~(b) A certified copy of the original sentencing court's~~  
254 ~~order finding the claimant to be a wrongfully incarcerated~~  
255 ~~person who is eligible for compensation under this act;~~

256 ~~(c) Certified copies of the original judgment and sentence;~~

257 ~~(d) Documentation demonstrating the length of the sentence~~  
258 ~~served, including documentation from the Department of~~  
259 ~~Corrections regarding the person's admission into and release~~  
260 ~~from the custody of the Department of Corrections;~~

261 (b)-(e) Positive proof of identification, including ~~two full~~

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262 ~~sets of fingerprints administered by a law enforcement agency~~  
263 ~~and~~ a current form of photo identification, demonstrating that  
264 the person seeking compensation is the same individual who was  
265 wrongfully incarcerated;

266 (c) ~~(f)~~ All supporting documentation of any fine, penalty,  
267 or court costs imposed and paid by the wrongfully incarcerated  
268 person as described in s. 961.06(1)(c);

269 (d) ~~(g)~~ All supporting documentation of any reasonable  
270 attorney's fees and expenses as described in s. 961.06(1)(d);  
271 and

272 (e) ~~(h)~~ Any other documentation, evidence, or information  
273 required by rules adopted by the department.

274 (5) Upon receipt of the application, the department shall:  
275 ~~forward one full set of fingerprints of the applicant to the~~  
276 ~~Department of Law Enforcement for statewide criminal records~~  
277 ~~checks. The Department of Law Enforcement shall forward the~~  
278 ~~second set of fingerprints to the Federal Bureau of~~  
279 ~~Investigation for national criminal records checks. The results~~  
280 ~~of the state and national records checks shall be submitted to~~  
281 ~~the department.~~

282 (a) Request that the clerk of the court provide a certified  
283 copy of the order vacating the conviction and sentence and  
284 certified copies of the original judgment and sentence. The  
285 clerk shall provide these records at no charge.

286 (b) Request that the Department of Corrections provide  
287 documentation demonstrating the length of the sentence served,  
288 including the dates of the wrongfully incarcerated person's  
289 admission into and release from the custody of the Department of  
290 Corrections. The Department of Corrections shall provide this

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291 documentation at no charge.

292 ~~(c)(6) Upon receipt of an application, the department shall~~  
293 Examine the application and notify the wrongfully incarcerated  
294 person claimant within 30 calendar days of any errors or  
295 omissions, and request any additional information relevant to  
296 the review of the application. The wrongfully incarcerated  
297 person claimant shall have 15 days after proper notification of  
298 any existing errors or omissions to supplement the application.  
299 The department may not deny an application for failure of the  
300 wrongfully incarcerated person claimant to correct an error or  
301 omission or supply additional information unless the department  
302 timely notified the person claimant of such errors or omissions  
303 or requested the additional information within the 30-day period  
304 specified in this subsection. The department shall process and  
305 review each completed application within 90 calendar days. Once  
306 the department determines whether a claim for compensation meets  
307 the requirements of this act, the department shall notify the  
308 wrongfully incarcerated person claimant within 5 business days  
309 of that determination.

310 ~~(6)(7)~~ If the department determines that a wrongfully  
311 incarcerated person claimant meets the requirements of this act,  
312 the wrongfully incarcerated person ~~who is the subject of the~~  
313 ~~claim~~ becomes entitled to compensation, subject to ~~the~~  
314 ~~provisions in s. 961.06.~~

315 Section 4. Section 961.06, Florida Statutes, is amended to  
316 read:

317 961.06 Compensation for wrongful incarceration.—

318 (1) Except as otherwise provided in this act and subject to  
319 the limitations and procedures prescribed in this section, a

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320 person who is found to be entitled to compensation under ~~the~~  
321 ~~provisions of~~ this act is entitled to:

322 (a) Monetary compensation for wrongful incarceration, which  
323 shall be calculated at a rate of \$50,000 for each year of  
324 wrongful incarceration, prorated as necessary to account for a  
325 portion of a year. For persons found to be wrongfully  
326 incarcerated after December 31, 2008, the Chief Financial  
327 Officer may adjust the annual rate of compensation for inflation  
328 using the change in the December-to-December "Consumer Price  
329 Index for All Urban Consumers" of the Bureau of Labor Statistics  
330 of the Department of Labor;

331 (b) A waiver of tuition and fees for up to 120 hours of  
332 instruction at any career center established under s. 1001.44,  
333 any community college as defined in s. 1000.21(3), or any state  
334 university as defined in s. 1000.21(6), if the wrongfully  
335 incarcerated person meets and maintains the regular admission  
336 requirements of such career center, community college, or state  
337 university; remains registered at such educational institution;  
338 and makes satisfactory academic progress as defined by the  
339 educational institution in which the wrongfully incarcerated  
340 person claimant is enrolled;

341 (c) The amount of any fine, penalty, or court costs ~~imposed~~  
342 ~~and~~ paid by the wrongfully incarcerated person;

343 (d) The amount of any reasonable attorney's fees and  
344 expenses incurred and paid by the wrongfully incarcerated person  
345 in connection with all criminal proceedings and appeals  
346 regarding the wrongful conviction, to be calculated by the  
347 department based upon the supporting documentation submitted as  
348 specified in s. 961.05; and

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349 (e) Notwithstanding any provision to the contrary in s.  
350 943.0585, immediate administrative expunction of the wrongfully  
351 incarcerated person's criminal record resulting from his or her  
352 wrongful arrest, wrongful conviction, and wrongful  
353 incarceration. The Department of Legal Affairs and the  
354 Department of Law Enforcement shall, upon a determination that a  
355 person ~~claimant~~ is entitled to compensation, immediately take  
356 all action necessary to administratively expunge the person's  
357 ~~claimant's~~ criminal record arising from his or her wrongful  
358 arrest, wrongful conviction, and wrongful incarceration. All  
359 fees for this process shall be waived.

360  
361 The total compensation awarded under paragraphs (a), (c), and  
362 (d) may not exceed \$2 million. No further award for attorney's  
363 fees, lobbying fees, costs, or other similar expenses shall be  
364 made by the state.

365 (2) In calculating monetary compensation under paragraph  
366 (1)(a), a wrongfully incarcerated person who is placed on parole  
367 or community supervision while serving the sentence resulting  
368 from the wrongful conviction and who commits anything less than  
369 a felony law violation that results in revocation of the parole  
370 or community supervision is eligible for compensation for the  
371 total number of years incarcerated. A wrongfully incarcerated  
372 person who commits a felony law violation that results in  
373 revocation of the parole or community supervision is ineligible  
374 for any compensation under subsection (1).

375 (3) Within 15 calendar days after issuing notice to the  
376 wrongfully incarcerated person ~~claimant~~ that his or her claim  
377 satisfies all of the requirements under this act, the department

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378 shall notify the Chief Financial Officer to draw a warrant from  
379 the General Revenue Fund or another source designated by the  
380 Legislature in law for the purchase of an annuity for the  
381 wrongfully incarcerated person ~~claimant~~ based on the total  
382 amount determined by the department under this act.

383 (4) The Chief Financial Officer shall purchase an annuity  
384 on behalf of the wrongfully incarcerated person ~~claimant~~ for a  
385 term of not less than 10 years. The terms of the annuity shall:

386 (a) Provide that the annuity may not be sold, discounted,  
387 or used as security for a loan or mortgage by the wrongfully  
388 incarcerated person ~~applicant~~.

389 (b) Contain beneficiary provisions for the continued  
390 disbursement of the annuity in the event of the death of the  
391 wrongfully incarcerated person ~~applicant~~.

392 (5) Before the Chief Financial Officer draws the warrant  
393 for the purchase of the annuity, the wrongfully incarcerated  
394 person ~~claimant~~ must sign a release and waiver on behalf of the  
395 wrongfully incarcerated person ~~claimant~~ and his or her heirs,  
396 successors, and assigns, forever releasing the state or any  
397 agency, instrumentality, or any political subdivision thereof,  
398 or any other entity subject to ~~the provisions of~~ s. 768.28, from  
399 all present or future claims that the wrongfully incarcerated  
400 person ~~claimant~~ or his or her heirs, successors, or assigns may  
401 have against such entities arising out of the facts in  
402 connection with the wrongful conviction for which compensation  
403 is being sought under the act. The release and waiver must be  
404 provided to the department prior to the issuance of the warrant  
405 by the Chief Financial Officer.

406 (6) (a) A wrongfully incarcerated person may not submit an

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407 application for compensation under this act if the person has a  
408 civil action lawsuit pending against the state or any agency,  
409 instrumentality, or any political subdivision thereof, or any  
410 other entity subject to ~~the provisions of~~ s. 768.28, in state or  
411 federal court requesting compensation arising out of ~~the facts~~  
412 ~~in connection with~~ the wrongfully incarcerated person's  
413 ~~claimant's~~ conviction and incarceration.

414 (b) A wrongfully incarcerated person may not submit an  
415 application for compensation under this act if the person has  
416 received a prior judgment in his or her favor in a civil action  
417 against the state or any agency, instrumentality, or any  
418 political subdivision thereof, or against any other entity  
419 subject to s. 768.28, in state or federal court arising out of  
420 the wrongfully incarcerated person's conviction and  
421 incarceration.

422 (c) ~~(b)~~ A wrongfully incarcerated person may not submit an  
423 application for compensation under this act if the person is the  
424 subject of a claim bill pending for claims arising out of ~~the~~  
425 ~~facts in connection with~~ the wrongfully incarcerated person's  
426 ~~claimant's~~ conviction and incarceration.

427 (d) ~~(e)~~ Once an application is filed under this act, a  
428 wrongfully incarcerated person may not pursue recovery under a  
429 claim bill until the final disposition of the application.

430 (e) ~~(d)~~ Any amount awarded under this act is intended to  
431 provide the sole compensation for any and all present and future  
432 claims arising out of ~~the facts in connection with~~ the  
433 wrongfully incarcerated person's ~~claimant's~~ conviction and  
434 incarceration. Upon notification by the department that an  
435 application meets the requirements of this act, a wrongfully

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436 incarcerated person may not recover under a claim bill.

437       (f)~~(e)~~ Any compensation awarded under a claim bill shall be  
438 the sole redress for claims arising out of ~~the facts in~~  
439 ~~connection with~~ the wrongfully incarcerated person's ~~claimant's~~  
440 conviction and incarceration and, upon any award of compensation  
441 to a wrongfully incarcerated person under a claim bill, the  
442 person may not receive compensation under this act.

443       (7) Any payment made under this act does not constitute a  
444 waiver of any defense of sovereign immunity or an increase in  
445 the limits of liability on behalf of the state or any person  
446 subject to ~~the provisions of~~ s. 768.28 or other law.

447       Section 5. This act shall take effect July 1, 2009.