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CS/HB 227

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1
2 An act relating to victims of wrongful incarceration;
3 creating s. 961.055, F.S.; providing that a wrongfully
4 incarcerated person who was convicted and sentenced to
5 death on or before December 31, 1979, is exempt from
6 certain application procedures for compensation if a
7 special prosecutor issues a nolle prosequi after
8 reviewing the defendant's conviction; creating s.
9 961.056, F.S.; providing alternative procedures for
10 applying for compensation; requiring the claimant to
11 file an application with the Department of Legal
12 Affairs within a specified time; requiring the
13 application to include certain information and
14 documents; providing that the claimant is entitled to
15 compensation if all requirements are met; prohibiting
16 compensation from being used for specified attorney
17 fees, lobbyist fees, and costs; providing criminal
18 penalties; providing that the section is repealed on a
19 specified date; amending s. 961.06, F.S.; requiring
20 the Chief Financial Officer to issue payment to an
21 insurance company or other financial institution
22 authorized to issue annuity contracts to purchase an
23 annuity or annuities selected by the wrongfully
24 incarcerated person; requiring the Chief Financial
25 Officer to execute all necessary agreements to
26 implement compensation and to maximize the benefit to

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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27 the wrongfully incarcerated person; requiring the
 28 wrongfully incarcerated person to sign a waiver before
 29 the department's approval of the application;
 30 providing an effective date.

31

32 Be It Enacted by the Legislature of the State of Florida:

33

34 Section 1. Section 961.055, Florida Statutes, is created
 35 to read:

36 961.055 Application for compensation for a wrongfully
 37 incarcerated person; exemption from application by nolle
 38 prosequi.-

39 (1) A person alleged to be a wrongfully incarcerated
 40 person who was convicted and sentenced to death on or before
 41 December 31, 1979, is exempt from the application provisions of
 42 ss. 961.03, 961.04, and 961.05 in the determination of wrongful
 43 incarceration and eligibility to receive compensation pursuant
 44 to s. 961.06 if:

45 (a) The Governor issues an executive order appointing a
 46 special prosecutor to review the defendant's conviction; and

47 (b) The special prosecutor thereafter enters a nolle
 48 prosequi for the charges for which the defendant was convicted
 49 and sentenced to death.

50 (2) The nolle prosequi constitutes conclusive proof that
 51 the defendant is innocent of the offenses charged and is
 52 eligible to receive compensation under this chapter.

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53 (3) This section is repealed July 1, 2018.

54 Section 2. Section 961.056, Florida Statutes, is created
55 to read:

56 961.056 Alternative application for compensation for a
57 wrongfully incarcerated person.-

58 (1) A person who has been determined to be a wrongfully
59 incarcerated person pursuant to s. 961.055 is eligible to apply
60 to the department to receive compensation for such wrongful
61 incarceration.

62 (a) Only the wrongfully incarcerated person may apply for
63 compensation. The estate of, or personal representative for, a
64 decedent may not apply on behalf of the decedent for
65 compensation for wrongful incarceration.

66 (b) In order to receive compensation, the wrongfully
67 incarcerated person shall, by July 1, 2016, submit to the
68 Department of Legal Affairs an application for compensation
69 irrespective of whether the person has previously sought
70 compensation under this chapter. The application must include:

71 1. A certified copy of the nolle prosequi or nolle
72 prosequi memorandum;

73 2. Certified copies of the original judgment and sentence;

74 3. Documentation demonstrating the length of the sentence
75 served, including documentation from the Department of
76 Corrections regarding the person's admission into and release
77 from the custody of the Department of Corrections;

78 4. Positive proof of identification, as evidenced by two

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79 full sets of fingerprints prepared by a law enforcement agency
80 of this state and a current form of photo identification;

81 5. Supporting documentation of any fine, penalty, or court
82 costs imposed on and paid by the wrongfully incarcerated person
83 as described in s. 961.06(1);

84 6. Supporting documentation of any reasonable attorney
85 fees and expenses as described in s. 961.06(1); and

86 7. Any other documentation, evidence, or information
87 required by rules adopted by the department.

88 (2) The law enforcement agency that prepared the
89 applicant's set of fingerprints shall forward both full sets to
90 the Department of Law Enforcement. The Department of Law
91 Enforcement shall retain one set for statewide criminal records
92 checks and forward the second set of fingerprints to the Federal
93 Bureau of Investigation for national criminal records checks.
94 The results of the state and national records checks shall be
95 submitted to the department.

96 (3) Upon receipt of an application, the department shall
97 examine the application and, within 30 days after receipt of the
98 application, shall notify the claimant of any error or omission
99 and request any additional information relevant to the review of
100 the application.

101 (a) The claimant has 15 days after proper notification by
102 the department to correct any identified error or omission in
103 the application and to supply any additional information
104 relevant to the application.

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105 (b) The department may not deny an application for failure
 106 of the claimant to correct an error or omission or to supply
 107 additional information unless the department has notified the
 108 claimant of such error or omission and requested the additional
 109 information within the 30-day period specified in this
 110 subsection.

111 (c) The department shall process and review each complete
 112 application within 90 calendar days.

113 (d) Once the department determines whether a claim for
 114 compensation meets the requirements of this chapter, the
 115 department shall notify the claimant within 5 business days
 116 after that determination.

117 (4) If the department determines that a claimant making
 118 application under this section meets the requirements of this
 119 chapter, the wrongfully incarcerated person is entitled to
 120 compensation under s. 961.06.

121 (5) (a) No portion of the compensation paid to a claimant
 122 making application under this section may be used for attorney
 123 fees, lobbyist fees, or costs relating to assisting the claimant
 124 in receiving such compensation.

125 (b) A person who accepts any portion of the compensation
 126 paid to a claimant making application under this section as
 127 payment for attorney fees, lobbyist fees, or costs relating to
 128 assisting the claimant in receiving such compensation commits a
 129 misdemeanor of the first degree, punishable as provided in s.
 130 775.082 or s. 775.083.

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131 (6) This section is repealed July 1, 2018.
 132 Section 3. Subsections (4) and (5) of section 961.06,
 133 Florida Statutes, are amended to read:
 134 961.06 Compensation for wrongful incarceration.—
 135 (4) The Chief Financial Officer shall issue payment in the
 136 amount determined by the department to an insurance company or
 137 other financial institution admitted and authorized to issue
 138 purchase an annuity contracts in this state to purchase an
 139 annuity or annuities, selected by the wrongfully incarcerated
 140 person, on behalf of the claimant for a term of not less than 10
 141 years. The Chief Financial Officer is directed to execute all
 142 necessary agreements to implement this act and to maximize the
 143 benefit to the wrongfully incarcerated person. The terms of the
 144 annuity or annuities shall:
 145 (a) Provide that the annuity or annuities may not be sold,
 146 discounted, or used as security for a loan or mortgage by the
 147 wrongfully incarcerated person applicant.
 148 (b) Contain beneficiary provisions for the continued
 149 disbursement of the annuity or annuities in the event of the
 150 death of the wrongfully incarcerated person applicant.
 151 (5) Before the department approves the application for
 152 compensation ~~Chief Financial Officer draws the warrant for the~~
 153 ~~purchase of the annuity,~~ the wrongfully incarcerated person
 154 ~~claimant~~ must sign a release and waiver on behalf of the
 155 wrongfully incarcerated person claimant and his or her heirs,
 156 successors, and assigns, forever releasing the state or any

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157 | agency, instrumentality, or any political subdivision thereof,
158 | or any other entity subject to ~~the provisions of~~ s. 768.28, from
159 | all present or future claims that the wrongfully incarcerated
160 | person ~~claimant~~ or his or her heirs, successors, or assigns may
161 | have against such entities arising out of the facts in
162 | connection with the wrongful conviction for which compensation
163 | is being sought under the act. ~~The release and waiver must be~~
164 | ~~provided to the department prior to the issuance of the warrant~~
165 | ~~by the Chief Financial Officer.~~

166 | Section 4. This act shall take effect July 1, 2014.