

042840524

SENATE BILL NO. 271

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on March 1, 2004)

(Patron Prior to Substitute—Senator Quayle)

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 8.01 an article numbered 18.2, consisting of sections numbered 8.01-195.10, 8.01-195.11, and 8.01-195.12, relating to compensation for wrongful incarceration for a felony conviction.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 8.01 an article numbered 18.2, consisting of sections numbered 8.01-195.10, 8.01-195.11, and 8.01-195.12, as follows:

Article 18.2.

Compensation For Wrongful Incarceration For A Felony Conviction.

§ 8.01-195.10. Purpose; action by the General Assembly required; definitions.

A. The purpose of this article is to provide directions and guidelines for the compensation of persons who have been wrongfully incarcerated in the Commonwealth. The payment and receipt of any compensation for wrongful incarceration shall be contingent upon the General Assembly appropriating funds for that purpose. This article shall not provide an entitlement to compensation for persons wrongfully incarcerated or require the General Assembly to appropriate funds for the payment of such compensation. No estate of or personal representative for a decedent shall be entitled to seek a claim for compensation for wrongful incarceration.

B. As used in this article:

"Wrongful incarceration" or "wrongfully incarcerated" means incarceration for a felony conviction for which (i) the conviction has been vacated pursuant to Chapter 19.2 (§ 19.2-327.2 et seq.) of Title 19.2, (ii) the person incarcerated must have entered a final plea of not guilty, or regardless of the plea, any person sentenced to death, or convicted of a Class 1 felony, a Class 2 felony, or any felony for which the maximum penalty is imprisonment for life, and (iii) the person incarcerated did not by any act or omission on his part intentionally contribute to his conviction for the felony for which he was incarcerated.

"Incarceration" or "incarcerated" means confinement in a local or regional correctional facility, juvenile correctional center, state correctional facility, residential detention center, or facility operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.)

§ 8.01-195.11. Compensation for wrongful incarceration.

A. Any person who is convicted of a felony by a county or city circuit court of the Commonwealth and is wrongfully incarcerated for such felony may be compensated for each day of his incarceration in the amount not to exceed \$70 per day; however, such compensation is not to exceed a total award of \$500,000 as compensatory damages. For purposes of determining the total number of days of wrongful incarceration for a felony conviction, the total period of incarceration for consecutive sentences for criminal convictions arising out of the same occurrence or event shall be considered the period of wrongful incarceration.

B. Any compensation computed pursuant to subsection A and approved by the General Assembly shall be paid by the Comptroller by his warrant on the State Treasurer in favor of the person found to have been wrongfully incarcerated. The person wrongfully incarcerated shall be paid an initial lump sum equal to 25 percent of the compensation award with the remaining 75 percent of the principal of the compensation award to be used by the State Treasurer to purchase an annuity from any A+ rated company, including any A+ rated company from which the State Lottery Department may purchase an annuity, to provide equal monthly payments to such person for a period certain of 10 years commencing no later than one year after the effective date of the appropriation. The annuity shall provide that it shall not be sold, discounted, or used as securitization for loans and mortgages by the person awarded compensation. The annuity shall, however, contain beneficiary provisions providing for the annuity's continued disbursement in the event of the death of the person awarded compensation. All payments or costs of annuities under this section shall be made by check issued by the State Treasurer on warrant of the Comptroller.

C. Any person who is convicted of a felony by a county or city circuit court of the Commonwealth and is wrongfully incarcerated for such felony shall receive a transition assistance grant of \$15,000 to be paid from the Criminal Fund, which amount shall be deducted from any award received pursuant to subsection B. In addition, such person shall be entitled to receive reimbursement up to \$10,000 for tuition for career and technical training within the Virginia community college system contingent upon successful completion of the training. Reimbursement for tuition shall be provided by the community

60 college at which the career or technical training was completed.

61 § 8.01-195.12. Conditions for continued compensation.

62 A. Any person awarded compensation under this article who is subsequently convicted of a felony
63 shall, immediately upon such conviction, not be eligible to receive any unpaid amounts from any
64 compensation awarded and his beneficiaries shall not be eligible to receive any payments under an
65 annuity purchased pursuant to subsection B of § 8.01-195.11. Any unpaid amounts remaining under any
66 annuity shall become the property of the Commonwealth and shall be deposited into the general fund of
67 the state treasury.

68 B. As a condition of receiving any compensation under this article, a person shall execute a release
69 and waiver forever releasing (i) the Commonwealth or any agency, instrumentality, officer, employee, or
70 political subdivision thereof, (ii) any legal counsel appointed pursuant to § 19.2-159, and (iii) all other
71 parties of interest, from any present or future claims the person receiving compensation may have
72 against such enumerated parties and arising out of the factual situation in connection with the
73 conviction for which compensation is being sought under this article. In addition, the person receiving
74 compensation shall not have been awarded a finally adjudicated judgment in a court of law against or
75 received any funds pursuant to a settlement agreement with any person or entity described in this
76 subsection for compensation or damages arising out of the factual situation in connection with the
77 conviction.