

VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

CHAPTER 557

An Act to amend and reenact §§ 8.01-195.10, 8.01-195.11, and 8.01-195.12 of the Code of Virginia, relating to compensation for wrongful incarceration for a felony conviction.

[H 559]

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-195.10, 8.01-195.11, and 8.01-195.12 of the Code of Virginia are amended and reenacted as follows:

§ 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. Compensation for wrongful incarceration is governed by Article IV, Section 14 of the Constitution of Virginia, which prohibits the General Assembly from granting relief in cases in which the courts or other tribunals may have jurisdiction and any individual seeking payment of state funds for wrongful incarceration shall be deemed to have waived all other claims. 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:

"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.).

"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 *or the person incarcerated has been granted an absolute pardon for the commission of a crime that he did not commit*, (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.

§ 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 awarded compensation in an amount equal to 90 percent of the *inflation adjusted* Virginia per capita personal income as reported by the Bureau of Economic Analysis of the United States Department of Commerce for each year, or portion thereof, of incarceration up to 20 years.

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 20 percent of the compensation award with the remaining 80 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 25 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 college at which the career or technical training was completed.

§ 8.01-195.12. Conditions for continued compensation.

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

A1. Any person awarded compensation under this article who is subsequently incarcerated upon the revocation of parole or probation resulting from the commission of an act that constitutes a crime shall, during the period of such incarceration, forfeit any payments under an annuity purchased pursuant to subsection B of § 8.01-195.11. Any forfeited amounts under any annuity shall become the property of the Commonwealth and shall be deposited into the general fund of the state treasury.

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