



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-0066/2  
JTK/MES/PJH:cjs/kjf/jld:jf

## 2011 BILL

1     **AN ACT** *to renumber and amend* 775.05 (2); *to amend* 20.505 (4) (d), 40.51 (1),  
2           227.03 (5), 775.05 (3) and (4) and 775.05 (5); and *to create* 20.515 (1) (ds),  
3           20.515 (1) (g), 40.515, 71.05 (6) (b) 48., 227.43 (1) (bw), 301.051, 775.05 (2) (b),  
4           775.05 (4m) and (4r), 808.085, 977.05 (4) (jr) and 977.05 (4) (jw) of the statutes;  
5     **relating to:** resolution of claims against the state for wrongful imprisonment  
6     of innocent persons, exempting from taxation certain amounts an individual  
7     receives from the claims board or legislature, and making appropriations.

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### ***Analysis by the Legislative Reference Bureau***

Currently, the state claims board is directed to hear petitions for compensation by persons who are released from imprisonment for crimes of which they claim to be innocent. The board must find either that the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she was imprisoned or that the evidence is not clear and convincing that he or she was innocent. If the board finds that the petitioner was innocent and that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, the board must award the petitioner compensation not to exceed \$25,000 total nor more than \$5,000 for each year of imprisonment. This amount includes any expenses for attorney fees, costs, and disbursements incurred by the petitioner. Any award is paid from state general purpose revenues. If the

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board determines that it is not able to award an adequate compensation, it is directed to submit a report to the legislature specifying the amount that it considers to be adequate.

This bill provides that when the claims board receives a claim for wrongful imprisonment filed by a petitioner who has been released from imprisonment and who claims to be innocent of the crime for which he or she was imprisoned, the board must refer the petition to the Division of Hearings and Appeals in the Department of Administration (DOA). The bill then allows either DOA or the office of the prosecutor who prosecuted the petitioner to file a written request with the claims board for a hearing within 30 days after the original petition is filed with the board. If a timely request for a hearing is filed, or if the division concludes that it cannot determine the petitioner's eligibility for compensation without a hearing, the division must hold a hearing within 60 days after the petition is filed. If a timely request for a hearing is not filed and the division is able to determine that the petitioner is eligible for compensation without a hearing, the division must decide the matter without a hearing, except that the division must afford a petitioner an opportunity for a hearing before denying compensation to the petitioner. If a hearing is held, the bill allows the petitioner to be represented by a public defender. If a hearing is held, the division appoints a hearing examiner to hear the petition. If no hearing is held, the division decides the matter without a hearing. The hearing examiner makes findings and issues a decision concerning whether the petitioner is entitled to compensation. The findings must be based upon the preponderance of evidence (a lesser evidentiary standard than clear and convincing evidence). The petitioner need not show that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation. If the hearing examiner's finding is in the affirmative, the examiner must award compensation to the petitioner in an amount that the examiner considers to be adequate and the board must pay that amount to the petitioner. Under the bill, the amount of compensation is fixed at a rate of \$50,000 per year and there is no limit on the total amount of an award. The \$50,000 annual rate is subject to annual adjustment based upon changes in the cost of living. In addition, each award must include reimbursement for reasonable, actual attorney fees, together with all costs and disbursements incurred by the petitioner in his or her defense, post-conviction, and compensation proceedings and all fees, surcharges, and restitution paid by the petitioner as a result of his or her arrest and imprisonment. The bill provides that no person may file a claim for wrongful imprisonment as a result of his or her conviction for a crime if the person is imprisoned as the result of his or her conviction for a felony in any court of this state arising from the same course of conduct that resulted in conviction for the crime of which the person claims to be innocent if the person does not claim to be innocent of that felony.

Under current law, the Group Insurance Board, attached to the Department of Employee Trust Funds, contracts on behalf of the state for the purpose of providing health care coverage to state employees. This bill permits individuals who receive compensation from the state for wrongful imprisonment to elect, for up to ten years, health care coverage under plans offered by the Group Insurance Board to state

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employees beginning on January 1, 2013. Under the bill, these individuals would be required to pay the same health insurance premium amounts that state employees are required to pay, with the balance of the premium cost paid by the state.

Under the bill, if a person's conviction for a crime is reversed, set aside, or vacated on grounds consistent with the person's innocence, and the person is ordered released from prison by a trial court, the court is required to grant the person, upon request, temporary financial assistance, transition assistance from the department of corrections (DOC) and local aid agencies, and sealing of all records related to his or her conviction. If the person pursues a successful petition for wrongful imprisonment, any temporary financial assistance he or she received upon release from prison is subtracted from any compensation he or she receives for wrongful imprisonment.

The bill also exempts from taxation the payments that an individual, or his or her estate, receives from the claims board, or from the state legislature as a result of claims board action.

The bill initially applies with respect to claims filed by persons who are released on or after January 1, 2006, from imprisonment for crimes of which they claim to be innocent.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 20.505 (4) (d) of the statutes is amended to read:

2           20.505 (4) (d) *Claims awards.* A sum sufficient for payment of awards made  
3 by the claims board or department of administration under ss. 16.007, 775.05 (4),  
4 775.06 and 775.11, awards of financial assistance under s. 808.085, and awards made  
5 by an act of the legislature arising from a claim filed with the claims board which are  
6 not directed by law or under s. 16.007 (6m) to be paid from another appropriation.

7           **SECTION 2.** 20.515 (1) (ds) of the statutes is created to read:

8           20.515 (1) (ds) *Payment of health insurance premiums for individuals who*  
9 *receive compensation for wrongful imprisonment.* A sum sufficient to pay the state's

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1 share of premium costs for health care benefits and the cost of administering the  
2 benefits for individuals under s. 40.515.

3 **SECTION 3.** 20.515 (1) (g) of the statutes is created to read:

4 20.515 (1) (g) *Benefit and coverage payments; health care coverage for*  
5 *individuals who receive compensation for wrongful imprisonment.* All moneys  
6 received from individuals under s. 40.515 who elect to be included in a health care  
7 coverage plan under s. 40.51 (6), for the payment of benefits and the cost of  
8 administering benefits for the individuals.

9 **SECTION 4.** 40.51 (1) of the statutes is amended to read:

10 40.51 (1) The procedures and provisions pertaining to enrollment, premium  
11 transmitted and coverage of eligible employees and individuals eligible for health  
12 care coverage under s. 40.515 for health care benefits shall be established by contract  
13 or rule except as otherwise specifically provided by this chapter.

14 **SECTION 5.** 40.515 of the statutes is created to read:

15 **40.515 Health care coverage for individuals who receive**  
16 **compensation for wrongful imprisonment. (1)** Beginning on January 1, 2013,  
17 any individual who receives compensation under s. 775.05 after the effective date of  
18 this subsection .... [LRB inserts date], may elect coverage under any health care  
19 coverage plan offered under s. 40.51 (6) for a period not to exceed 10 years.

20 **(2)** The individual and the state shall jointly pay the full premium cost of health  
21 care coverage and the cost of administering the benefits. The amount that the  
22 individual must pay in health insurance premiums shall equal the amount required  
23 to be paid by state employees, as determined by the director of the office of state  
24 employment relations under s. 40.05 (4) (ah). The remainder of the premium cost for

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1 health care coverage for these individuals shall be paid from the appropriation  
2 account under s. 20.515 (1) (ds).

3 **SECTION 6.** 71.05 (6) (b) 48. of the statutes is created to read:

4 71.05 **(6)** (b) 48. Any amount received by an individual, or the individual's  
5 estate, from the claims board under s. 775.05 (4), from the legislature under the  
6 process described in s. 775.05 (4), or from a financial assistance award granted under  
7 s. 808.085, in the taxable year that relates to the year in which the payment is  
8 received.

9 **SECTION 7.** 227.03 (5) of the statutes is amended to read:

10 227.03 **(5)** This chapter does not apply to proceedings of the claims board,  
11 except as provided in ss. ~~775.05 (5)~~, 775.06 (7) and 775.11 (2), and except that  
12 proceedings under s. 775.05 are subject to this chapter, unless otherwise provided in  
13 s. 775.05.

14 **SECTION 8.** 227.43 (1) (bw) of the statutes is created to read:

15 227.43 **(1)** (bw) Assign a hearing examiner to preside over each hearing  
16 conducted under s. 775.05.

17 **SECTION 9.** 301.051 of the statutes is created to read:

18 **301.051 Wrongful conviction; transition plan.** Not more than 5 days after  
19 a court issues an order for a plan requested by an inmate pursuant to 808.085 (1) (a),  
20 the department shall create a transition to release plan for the inmate. The plan shall  
21 do all of the following:

22 **(1)** Provide the inmate with a written list of community resources available to  
23 the inmate upon his or her release from prison, including temporary housing and  
24 emergency shelters, food banks, education and job assistance, and health care

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1 services in the county into which the inmate will be released. The department shall  
2 maintain up to date lists with contact information for each county in the state.

3 (2) Provide the inmate with an individual counseling session with a person  
4 trained by the department or the county into which the inmate will be released to  
5 assist inmates in the transition to release from prison.

6 (3) Schedule an appointment, set for not later than 2 weeks after the inmate's  
7 date of release, with a social worker or aid program administrator for the county into  
8 which the inmate will be released.

9 **SECTION 10.** 775.05 (2) of the statutes is renumbered 775.05 (2) (a) and  
10 amended to read:

11 775.05 (2) (a) ~~Any~~ Except as provided in par. (b), any person who is imprisoned  
12 as the result of his or her conviction for a crime in any court of this state, of which  
13 crime the person claims to be innocent, and who is released from imprisonment for  
14 that crime after March 13, 1980, may petition the claims board for compensation for  
15 such imprisonment. ~~Upon~~ Within 5 days after receipt of the petition, the claims  
16 ~~board~~ department of administration shall transmit a copy thereof to the prosecutor  
17 who prosecuted the petitioner and the judge who sentenced the petitioner for the  
18 conviction which is the subject of the claim, or their successors in office, for the  
19 information of these persons.

20 **SECTION 11.** 775.05 (2) (b) of the statutes is created to read:

21 775.05 (2) (b) Paragraph (a) does not apply to a person who is imprisoned as  
22 the result of his or her conviction for a felony in any court of this state arising from  
23 the same course of conduct that resulted in conviction for the crime of which the  
24 person claims to be innocent if the person does not claim to be innocent of that felony.

25 **SECTION 12.** 775.05 (3) and (4) of the statutes are amended to read:

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1           775.05 **(3)** ~~After hearing the evidence on the petition, the claims board~~ Upon  
2 receipt of a petition under sub. (2) (a), the department of administration shall  
3 promptly refer the petition to the division of hearings and appeals. No later than 30  
4 days after the petition is filed, the department of administration or the office of the  
5 prosecutor who was responsible for prosecuting the petitioner may file a written  
6 request with the claims board for an evidentiary hearing on the petition. If a timely  
7 request for a hearing is filed, or if the division concludes that it cannot determine the  
8 petitioner's eligibility for compensation without a hearing, the division shall hold a  
9 hearing on the petition no later than 60 days after the petition is filed. If no request  
10 for a hearing is filed within the time specified in this subsection, and the division is  
11 able to determine that the petitioner is eligible for compensation without a hearing,  
12 the division shall decide the matter without a hearing, except that the division shall  
13 not deny a petition for compensation without affording the petitioner an opportunity  
14 for a hearing. The division shall find either that the preponderance of evidence is  
15 clear and convincing demonstrates that the petitioner was innocent of the crime for  
16 which he or she suffered imprisonment, or that the preponderance of evidence is not  
17 clear and convincing does not demonstrate that he or she was innocent.

18           **(4)** ~~If the claims board~~ division of hearings and appeals finds that the  
19 preponderance of evidence demonstrates that the petitioner was innocent ~~and that~~  
20 ~~he or she did not by his or her act or failure to act contribute to bring about the~~  
21 ~~conviction and imprisonment for which he or she seeks compensation, the claims~~  
22 ~~board~~ of the crime for which he or she was imprisoned, the division shall find the  
23 amount which will equitably compensate the petitioner, ~~not to exceed \$25,000 and~~  
24 ~~at a rate of compensation not greater than \$5,000~~ of \$50,000, or the amount  
25 determined under sub. (4m), whichever applies, per year, for the imprisonment.

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1 ~~Compensation awarded by the claims board~~ In addition, the division shall include  
2 find any amount to which the ~~board finds the~~ petitioner is entitled for reasonable,  
3 actual attorney fees, together with all costs and disbursements incurred by the  
4 petitioner in his or her defense, post-conviction, and compensation proceedings and  
5 all fees, surcharges, and restitution paid by the petitioner as a result of his or her  
6 arrest and imprisonment. The division shall subtract any moneys received by the  
7 petitioner under s. 808.085. If the ~~claims board~~ division finds that the amount it is  
8 able to ~~award~~ find is not an adequate compensation it shall submit a report specifying  
9 an amount which it considers adequate to the chief clerk of each house of the  
10 legislature, for distribution to the legislature under s. 13.172 (2). Upon conclusion  
11 of the proceeding, the division shall transmit its findings and decision to the claims  
12 board, which shall award the compensation specified in the decision and order  
13 disbursement of the award to the petitioner from the appropriation under s. 20.505  
14 (4) (d).

15 **SECTION 13.** 775.05 (4m) and (4r) of the statutes are created to read:

16 775.05 **(4m)** On April 1 of each year, the claims board shall adjust the  
17 maximum amount specified in sub. (4) to reflect any changes in the U.S. consumer  
18 price index for all urban consumers, U.S. city average, as determined by the U.S.  
19 department of labor, for the 12-month period ending on the preceding December 31.  
20 The board shall publish the adjusted amount so determined in the Wisconsin  
21 administrative register.

22 **(4r)** At any hearing conducted under this section, the petitioner may be  
23 represented by counsel of his or her own choosing. The department of administration  
24 shall represent the interests of the state.

25 **SECTION 14.** 775.05 (5) of the statutes is amended to read:

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1           775.05 (5) The claims board shall keep a complete record of ~~its~~ the proceedings  
2           in each case petition under this section and of all the evidence related to the petition.  
3           The findings and decision of the division of hearings and appeals and the award of  
4           the claims board shall be subject to review as provided in ch. 227.

5           **SECTION 15.** 808.085 of the statutes is created to read:

6           **808.085 Wrongful conviction; relief. (1)** If a court acts under s. 808.08 to  
7           release a person from confinement from a prison, the person may petition the court  
8           for any or all of the following:

9           (a) A court order directing the department of corrections to create a transition  
10          to release plan.

11          (b) A financial assistance award not to exceed 133 percent of the federal poverty  
12          level for up to 14 months, or while proceedings under s. 775.05 are pending,  
13          whichever is shorter.

14          (c) Sealing of all records related to the case. Records sealed under this section  
15          shall be accessible to the person but may not be available for public inspection or  
16          through the consolidated court automation program case management system.

17          **(2)** The court shall, within 10 days after it receives the petition under sub. (1),  
18          grant the relief sought if the person's criminal conviction was reversed, set aside, or  
19          vacated for reasons not inconsistent with the person's innocence of the crime for  
20          which he or she was convicted.

21          **(3)** If a person who is granted relief under this section is subsequently convicted  
22          of the same charges for which he or she was granted relief, or if his or her conviction  
23          is reinstated, the person shall repay any financial assistance award granted under  
24          this section and all records related to the case shall be unsealed.

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1           **(4)** To the extent it is not contrary to or inconsistent with federal law, financial  
2 assistance a person receives pursuant to this section may not be included as income  
3 for the purpose of determining whether the person is indigent under rules  
4 promulgated under ch. 977 or for the purpose of determining the person's eligibility  
5 for any program for which the department of health services or the department of  
6 children and families provides services, benefits, or other assistance under ch. 49.

7           **SECTION 16.** 977.05 (4) (jr) of the statutes is created to read:

8           977.05 **(4)** (jr) At the request of a person determined by the state public  
9 defender to be indigent or upon referral of any court, represent the person in  
10 proceedings under s. 775.05.

11           **SECTION 17.** 977.05 (4) (jw) of the statutes is created to read:

12           977.05 **(4)** (jw) At the request of an inmate determined by the state public  
13 defender to be indigent or upon referral of any court, represent the person in  
14 proceedings under s. 808.085.

15           **SECTION 18. Initial applicability.**

16           (1) This act first applies with respect to petitions filed by persons who are  
17 released on or after January 1, 2006, from imprisonment for crimes of which they  
18 claim to be innocent. If a person was released from imprisonment on or after January  
19 1, 2006, and accepted compensation from this state for wrongful imprisonment prior  
20 to the effective date of this subsection, the person may petition for additional  
21 compensation and compensation shall be awarded to the extent payable under  
22 section 775.05 of the statutes notwithstanding any release signed by the claimant as  
23 a condition precedent to receiving an initial compensation award.

24           (2) The treatment of section 71.05 (6) (b) 48. of the statutes first applies to  
25 taxable years beginning on January 1 of the year in which this subsection takes

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1 effect, except that if this subsection takes effect after July 31, section 71.05 (6) (b) 48.  
2 of the statutes first applies to taxable years beginning on January 1 of the year  
3 following the year in which this subsection takes effect.

4 (END)