**An Act To Establish a Fund To Compensate Unjustly Incarcerated Persons**

**Be it enacted by the People of the State of Maine as follows:**

**Sec.** **1. 5 MRSA §1524** is enacted to read:

**§****1524.** **Unjustly Incarcerated Persons Compensation Fund established**

The Unjustly Incarcerated Persons Compensation Fund, referred to in this section as "the compensation fund," is established as a nonlapsing fund. The compensation fund receives funds allocated or transferred by the Legislature from the unappropriated surplus of the General Fund. The State Controller shall disburse funds in accordance with the provisions established under chapter 603. The State Controller shall provide quarterly financial reports regarding the compensation fund to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs.

**Sec.** **2. 5 MRSA c. 603** is enacted to read:

**CHAPTER** **603**

**UNJUSTLY INCARCERATED PERSONS COMPENSATION FUND**

**§****22101.** **Compensation payments**

The State Controller shall make compensation payments in the amounts directed by this chapter to persons entitled to compensation from the Unjustly Incarcerated Persons Compensation Fund established in section 1524.

**§****22102.** **Persons entitled to compensation**

**1.** **Requirements.**  A person is entitled to compensation if:

A. The person has served in whole or in part a sentence of imprisonment under the laws of this State; and

B. The person has established by a preponderance of the evidence that:

(1) The person was convicted of murder or a Class A, B or C crime and subsequently imprisoned;

(2) The conviction was reversed or vacated and either the charges were dismissed or on retrial the person was found not guilty;

(3) The person did not commit the crime for which the person was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges or finding of not guilty on retrial; and

(4) The person did not commit or suborn perjury, fabricate evidence or by the person's own conduct bring about the conviction. Neither a confession or admission later found to be false nor a guilty plea constitutes committing or suborning perjury, fabricating evidence or bringing about the conviction under this subsection.

**2.** **Concurrent sentence.**  A person is not entitled to compensation under subsection 1 for any part of a sentence of imprisonment during which the person was also serving a concurrent sentence for another crime to which subsection 1 does not apply.

**3.** **Deceased person.**  If a deceased person would be entitled to compensation under subsection 1 if living, including a person who received a posthumous pardon, the person's estate is entitled to lump-sum compensation under section 22106.

**§****22103.** **Notice to person entitled to compensation**

**1.** **Information.**  The Department of Corrections shall provide to each person potentially entitled to compensation under section 22102, subsection 1 information, both orally and in writing, that includes:

A. Guidance on how to obtain compensation under this chapter; and

B. A list of and contact information for nonprofit advocacy groups, identified by the Department of Corrections, that assist persons in filing claims for compensation under this chapter.

**2.** **Timing.**  The Department of Corrections shall provide the information required under subsection 1:

A. At the time of the release of the person from imprisonment; or

B. As soon as practicable after the Department of Corrections has reason to believe that the person is entitled to compensation under section 22102, subsection 1.

**§****22104.** **Limitation on time to file**

A person seeking compensation under this chapter must file a claim in District Court, verified in the manner provided for the verification of complaints in the Maine Rules of Civil Procedure. The claim must be brought by the person within a period of 2 years after the dismissal of the criminal charges against the person or a finding of not guilty on retrial. If the person had the criminal charges dismissed or obtained a finding of not guilty on retrial prior to the effective date of this chapter, the person has 2 years from the effective date of this chapter to file a claim.

**§****22105.** **Determination of eligibility**

**1.** **Determination.**  The District Court shall determine:

A. The eligibility of the claimant pursuant to section 22102; and

B. The amount of compensation owed to an eligible claimant pursuant to section 22106.

**2.** **Attorney General.**  The person filing a claim pursuant to this chapter must serve the claim on the Attorney General in accordance with the Maine Rules of Civil Procedure.

**3.** **Jury trial.**  The claimant may request a jury trial, otherwise the claim filed pursuant to this chapter is tried by the court. If a jury trial is requested, the claim must be transferred to the Superior Court.

**4.** **Appeal.**  The claimant may appeal a claim that is denied to the Supreme Judicial Court sitting as the Law Court.

**§****22106.** **Amount of compensation**

**1.** **Compensation; time served.**  A person who meets the requirements of section 22102 is entitled to compensation in an amount equal to $50,000 multiplied by the number of years served in imprisonment, expressed as a fraction to reflect partial years.

**2.** **Compensation; registration as sex offender.**  A person who, after serving a sentence of imprisonment in this State for which the person is entitled to compensation under subsection 1, was required to register as a sex offender is entitled to additional compensation in an amount equal to $10,000 multiplied by the number of years served as a registered sex offender, expressed as a fraction to reflect partial years.

**3.** **Offset.**  This subsection applies to compensation under this chapter if the claimant previously received a qualifying monetary award or subsequently receives a qualifying monetary award.

A. If at the time of the judgment the claimant has won a monetary award against the State or any political subdivision of the State in a civil action related to the same subject or has entered into a settlement agreement with the State or any political subdivision of the State related to the same subject, the amount of the award in the action or the amount received in the settlement agreement, less any sums paid to attorneys or for costs in litigating the other civil action or obtaining the settlement agreement, must be deducted from the sum of money to which the claimant is entitled under this section. The court shall include in the judgment an award to the State of any amount deducted pursuant to this paragraph.

B. If paragraph A does not apply and if, after the time of the judgment, the claimant wins a monetary award against the State or any political subdivision of the State in a civil action related to the same subject, or enters into a settlement agreement with the State or any political subdivision of the State related to the same subject, the claimant shall reimburse the State for the sum of money paid under the judgment, less any sums paid to attorneys for costs in litigating the other civil action or obtaining the settlement agreement. A reimbursement required under this paragraph may not exceed the amount of the monetary award the claimant wins for damages in the other civil action or the amount received in the settlement agreement.

**§****22107.** **Payment of compensation**

**1.** **Choice of compensation.**  A person entitled to compensation under section 22102, subsection 1 may choose a lump-sum payment or annuity payments as provided in subsection 2.

**2.** **Annuity payments.**  Annuity payments under this subsection are based on a present value sum equal to the amount to which the person is entitled under section 22106, subsections 1 and 2 and are payable in equal monthly installments actuarially estimated for the life of the person until paid in full.

Annuity payments under this subsection must be based on a 5% per annum interest rate and other actuarial factors within the discretion of the State Controller. Annuity payments under this subsection may not be accelerated, deferred, increased or decreased. A person entitled to annuity payments under this subsection may not sell, mortgage or otherwise encumber or anticipate the payments, wholly or partly, by assignment or otherwise.

**§****22108.** **Exceptions to immunity**

Notwithstanding any immunity of the State from suit or liability, including the Maine Tort Claims Act, the State is liable for the unjust incarceration of a person as provided in this chapter.

**§****22109.** **Certificate of innocence and expungement**

**1.** **Certificate of innocence.**  If the court finds that the claimant is entitled to compensation under this chapter, it shall enter a certificate of innocence finding that the person was innocent of all crimes for which the person was mistakenly convicted.

**2.** **Expungement.**  Upon entry of a certificate of innocence, the court shall order the associated conviction and arrest records expunged and purged from all applicable state and federal systems pursuant to this subsection.

**Sec.** **3. 14 MRSA c. 747,** as amended, is repealed.

**SUMMARY**

This bill repeals the existing compensation for wrongful imprisonment law that relies on a pardon based on innocence and establishes a new compensation fund and process and changes the standard for eligibility. Under this bill, the claimant must establish by a preponderance of the evidence that:

1. The person was convicted of murder or a Class A, B or C crime and subsequently imprisoned;

2. The conviction was reversed or vacated and either the charges were dismissed or on retrial the person was found not guilty;

3. The person did not commit the crime or crimes for which the person was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges or finding of not guilty on retrial; and

4. The person did not commit or suborn perjury, fabricate evidence or by the person's own conduct bring about the conviction.

The bill provides that the person seeking compensation must file a claim with the District Court within a period of 2 years after the dismissal of the criminal charges or a finding of not guilty on retrial or 2 years from the effective date of the Maine Revised Statutes, Title 5, chapter 603 if the criminal charges were dismissed or the person received a finding of not guilty on retrial prior to the effective date of Title 5, chapter 603.

The bill assigns the determination of eligibility and compensation to the District Court, although the claim must be transferred to the Superior Court if the person requests a jury trial. The person seeking compensation must also serve the claim on the Attorney General.

The bill establishes compensation of $50,000 for each year of imprisonment and $10,000 for each year served as a registered sex offender.

The bill provides that any monetary award already received by the claimant or a settlement received by the claimant reduces the compensation under Title 5, chapter 603. Subsequent awards or settlements result in the claimant's reimbursing the State for compensation paid under Title 5, chapter 603.

The bill provides that, if the court finds that the claimant is entitled to a judgment of compensation, the court is required to enter a certificate of innocence finding that the person was innocent of all crimes for which the person was mistakenly convicted and the court is required to order the associated conviction and arrest records expunged and purged from all applicable state and federal systems.