

1 AN ACT relating to wrongful conviction compensation and making an  
2 appropriation therefor.

3 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO  
5 READ AS FOLLOWS:

6 *(1) A person convicted of a felony under the Kentucky Revised Statutes and*  
7 *imprisoned in a local or state correctional facility for one or more crimes where*  
8 *the person's conviction was reversed or vacated and either the charges were*  
9 *dismissed or the person was determined on retrial to be not guilty may bring an*  
10 *action against the Commonwealth for compensation under this section.*

11 *(2) In an action under this section, the person is entitled to compensation if the court*  
12 *finds that:*

13 *(a) The person was convicted of one or more crimes under the Kentucky*  
14 *Revised Statutes, was sentenced to a term of imprisonment in a local or*  
15 *state correctional facility for the crime or crimes, and served at least part of*  
16 *the sentence;*

17 *(b) The person's conviction was reversed or vacated and either the charges*  
18 *were dismissed or the person was determined on retrial to be not guilty; and*

19 *(c) New evidence:*

20 *1. Demonstrates that the person did not perpetrate the crime and was not*  
21 *an accessory or accomplice to the acts that were the basis of the*  
22 *conviction; and*

23 *2. Resulted in a reversal or vacation of the conviction, dismissal of the*  
24 *charges, or finding of not guilty.*

25 *(3) If a court finds that a person is entitled to compensation under subsection (2) of*  
26 *this section, the court shall order the Commonwealth to award the person one*  
27 *hundred forty-eight dollars (\$148) per day the person was imprisoned in a local*

1 or state correctional facility.

2 (4) An action filed pursuant to this section may be filed in the Circuit Court for the  
 3 county where the conviction occurred.

4 (5) An action filed pursuant to this section shall be brought before whichever of the  
 5 following periods last expires:

6 (a) Within two (2) years of the date of entry of an order dismissing the charges;

7 or

8 (b) Within two (2) years of the date of entry of an acquittal.

9 (6) It is the intention of the General Assembly to provide the means to enable a  
 10 person injured by the Commonwealth; its cabinets, departments, bureaus, or  
 11 agencies; its officers, agents, or employees while acting within the scope of their  
 12 employment; its political or civil subdivisions; or the officers, agents, or  
 13 employees of its political or civil subdivisions while acting within the scope of  
 14 their employment to be able to bring an action under this section. The  
 15 Commonwealth thereby waives the sovereign immunity defense only in the  
 16 limited situations set forth in this section.

17 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO  
 18 READ AS FOLLOWS:

19 In addition to fees created by KRS 23A.205, 23A.206, 23A.2065, 23A.207, 23A.208, and  
 20 23A.209, an administrative fee of ten dollars (\$10) shall be added to the costs that the  
 21 defendant is required to pay in criminal cases. The fee collected under this section  
 22 shall be allocated to the Finance and Administration Cabinet for the wrongful  
 23 conviction compensation fund created under Section 4 of this Act.

24 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 24A IS CREATED TO  
 25 READ AS FOLLOWS:

26 In addition to fees created by KRS 24A.175, 24A.176, 24A.1765, 24A.177, 24A.178, and  
 27 24A.179, an administrative fee of ten dollars (\$10) shall be added to the costs that the

1 defendant is required to pay in criminal cases. The fee collected under this section  
2 shall be allocated to the Finance and Administration Cabinet for the wrongful  
3 conviction compensation fund created under Section 4 of this Act.

4       ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO  
5 READ AS FOLLOWS:

6 (1) There is hereby created in the State Treasury a fund designated the "wrongful  
7 conviction compensation fund."

8 (2) The fund shall be administered by the Finance and Administration Cabinet.

9 (3) Beginning on the effective date of this Act, the revenues and interest from the  
10 fees imposed by Sections 2 and 3 of this Act shall be deposited in the fund and  
11 shall be used for the purpose of compensating people who have been wrongfully  
12 convicted.

13 (4) All interest earned on moneys in the fund shall be credited to the fund and shall  
14 not lapse.

15 (5) Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal  
16 year shall not lapse but shall be carried forward into the next fiscal year.

17 (6) Moneys deposited in the fund are hereby appropriated for the purpose of  
18 compensating people who have been wrongfully convicted and shall not be  
19 appropriated or transferred by the General Assembly for any other purpose.

20       ➔Section 5. KRS 141.019 is amended to read as follows:

21 In the case of taxpayers other than corporations:

22 (1) Adjusted gross income shall be calculated by subtracting from the gross income of  
23 those taxpayers the deductions allowed individuals by Section 62 of the Internal  
24 Revenue Code and adjusting as follows:

25 (a) Exclude income that is exempt from state taxation by the Kentucky  
26 Constitution and the Constitution and statutory laws of the United States;

27 (b) Exclude income from supplemental annuities provided by the Railroad

- 1 Retirement Act of 1937 as amended and which are subject to federal income  
2 tax by Pub. L. No. 89-699;
- 3 (c) Include interest income derived from obligations of sister states and political  
4 subdivisions thereof;
- 5 (d) Exclude employee pension contributions picked up as provided for in KRS  
6 6.505, 16.545, 21.360, 61.523, 61.560, 65.155, 67A.320, 67A.510, 78.610,  
7 and 161.540 upon a ruling by the Internal Revenue Service or the federal  
8 courts that these contributions shall not be included as gross income until such  
9 time as the contributions are distributed or made available to the employee;
- 10 (e) Exclude Social Security and railroad retirement benefits subject to federal  
11 income tax;
- 12 (f) Exclude any money received because of a settlement or judgment in a lawsuit  
13 brought against a manufacturer or distributor of "Agent Orange" for damages  
14 resulting from exposure to Agent Orange by a member or veteran of the  
15 Armed Forces of the United States or any dependent of such person who  
16 served in Vietnam;
- 17 (g) 1. a. For taxable years beginning after December 31, 2005, but before  
18 January 1, 2018, exclude up to forty-one thousand one hundred ten  
19 dollars (\$41,110) of total distributions from pension plans, annuity  
20 contracts, profit-sharing plans, retirement plans, or employee  
21 savings plans; and
- 22 b. For taxable years beginning on or after January 1, 2018, exclude  
23 up to thirty-one thousand one hundred ten dollars (\$31,110) of  
24 total distributions from pension plans, annuity contracts, profit-  
25 sharing plans, retirement plans, or employee savings plans.
- 26 2. As used in this paragraph:
- 27 a. "Annuity contract" has the same meaning as set forth in Section

- 1 1035 of the Internal Revenue Code;
- 2 b. "Distributions" includes but is not limited to any lump-sum
- 3 distribution from pension or profit-sharing plans qualifying for the
- 4 income tax averaging provisions of Section 402 of the Internal
- 5 Revenue Code; any distribution from an individual retirement
- 6 account as defined in Section 408 of the Internal Revenue Code;
- 7 and any disability pension distribution; and
- 8 c. "Pension plans, profit-sharing plans, retirement plans, or employee
- 9 savings plans" means any trust or other entity created or organized
- 10 under a written retirement plan and forming part of a stock bonus,
- 11 pension, or profit-sharing plan of a public or private employer for
- 12 the exclusive benefit of employees or their beneficiaries and
- 13 includes plans qualified or unqualified under Section 401 of the
- 14 Internal Revenue Code and individual retirement accounts as
- 15 defined in Section 408 of the Internal Revenue Code;
- 16 (h) 1. a. Exclude the portion of the distributive share of a shareholder's net
- 17 income from an S corporation subject to the franchise tax imposed
- 18 under KRS 136.505 or the capital stock tax imposed under KRS
- 19 136.300; and
- 20 b. Exclude the portion of the distributive share of a shareholder's net
- 21 income from an S corporation related to a qualified subchapter S
- 22 subsidiary subject to the franchise tax imposed under KRS
- 23 136.505 or the capital stock tax imposed under KRS 136.300.
- 24 2. The shareholder's basis of stock held in an S corporation where the S
- 25 corporation or its qualified subchapter S subsidiary is subject to the
- 26 franchise tax imposed under KRS 136.505 or the capital stock tax
- 27 imposed under KRS 136.300 shall be the same as the basis for federal

- 1 income tax purposes;
- 2 (i) Exclude income received for services performed as a precinct worker for  
3 election training or for working at election booths in state, county, and local  
4 primaries or regular or special elections;
- 5 (j) Exclude any capital gains income attributable to property taken by eminent  
6 domain;
- 7 (k) 1. Exclude all income from all sources for members of the Armed Forces  
8 who are on active duty and who are killed in the line of duty, for the year  
9 during which the death occurred and the year prior to the year during  
10 which the death occurred.
- 11 2. For the purposes of this paragraph, "all income from all sources" shall  
12 include all federal and state death benefits payable to the estate or any  
13 beneficiaries;
- 14 (l) Exclude all military pay received by members of the Armed Forces while on  
15 active duty;
- 16 (m) 1. Include the amount deducted for depreciation under 26 U.S.C. sec. 167  
17 or 168; and
- 18 2. Exclude the amounts allowed by KRS 141.0101 for depreciation;
- 19 (n) Include the amount deducted under 26 U.S.C. sec. 199A;
- 20 (o) Ignore any change in the cost basis of the surviving spouse's share of property  
21 owned by a Kentucky community property trust occurring for federal income  
22 tax purposes as a result of the death of the predeceasing spouse; ~~and~~
- 23 (p) Allow the same treatment allowed under Pub. L. No. 116-260, secs. 276 and  
24 278, related to the tax treatment of forgiven covered loans, deductions  
25 attributable to those loans, and tax attributes associated with those loans for  
26 taxable years ending on or after March 27, 2020, but before January 1, 2022;  
27 and

1        (g) Exclude any compensation received under Section 1 of this Act from the  
2        wrongful conviction compensation fund for time spent in a local or state  
3        correctional facility for taxable years beginning on or after January 1,  
4        2022; and

- 5        (2) Net income shall be calculated by subtracting from adjusted gross income all the  
6        deductions allowed individuals by Chapter 1 of the Internal Revenue Code, as  
7        modified by KRS 141.0101, except:
- 8        (a) Any deduction allowed by 26 U.S.C. sec. 164 for taxes;
  - 9        (b) Any deduction allowed by 26 U.S.C. sec. 165 for losses, except wagering  
10        losses allowed under Section 165(d) of the Internal Revenue Code;
  - 11        (c) Any deduction allowed by 26 U.S.C. sec. 213 for medical care expenses;
  - 12        (d) Any deduction allowed by 26 U.S.C. sec. 217 for moving expenses;
  - 13        (e) Any deduction allowed by 26 U.S.C. sec. 67 for any other miscellaneous  
14        deduction;
  - 15        (f) Any deduction allowed by the Internal Revenue Code for amounts allowable  
16        under KRS 140.090(1)(h) in calculating the value of the distributive shares of  
17        the estate of a decedent, unless there is filed with the income return a  
18        statement that the deduction has not been claimed under KRS 140.090(1)(h);
  - 19        (g) Any deduction allowed by 26 U.S.C. sec. 151 for personal exemptions and  
20        any other deductions in lieu thereof;
  - 21        (h) Any deduction allowed for amounts paid to any club, organization, or  
22        establishment which has been determined by the courts or an agency  
23        established by the General Assembly and charged with enforcing the civil  
24        rights laws of the Commonwealth, not to afford full and equal membership  
25        and full and equal enjoyment of its goods, services, facilities, privileges,  
26        advantages, or accommodations to any person because of race, color, religion,  
27        national origin, or sex, except nothing shall be construed to deny a deduction

1           for amounts paid to any religious or denominational club, group, or  
2           establishment or any organization operated solely for charitable or educational  
3           purposes which restricts membership to persons of the same religion or  
4           denomination in order to promote the religious principles for which it is  
5           established and maintained; and

6           (i) A taxpayer may elect to claim the standard deduction allowed by KRS  
7           141.081 instead of itemized deductions allowed pursuant to 26 U.S.C. sec. 63  
8           and as modified by this section.