STATE OF WYOMING

HOUSE BILL NO. HB0230

Compensation for exoneration based on DNA.

Sponsored by: Representative(s) Pelkey, Baker, Clem and Lindholm and Senator(s) Esquibel, F.

A BILL

for

1 ACT relating to criminal procedure; authorizing AN 2 compensation for persons exonerated based on DNA testing 3 and found factually innocent; specifying conditions, requirements and limitations on authorized compensation; 4 retaining governmental immunity as specified; conforming 5 6 provisions; providing for stay of order of expungement as 7 specified; providing an appropriation; and providing for an effective date. 8 9 10 Be It Enacted by the Legislature of the State of Wyoming:

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12 Section 1. W.S. 7-12-316 and 7-12-317 are created to 13 read:

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15 **7-12-316.** Compensation.

1 2 (a) A movant is eligible for compensation as provided 3 in this section if: 4 5 (i) The court entered an order of actual innocence and exoneration pursuant to W.S. 7-12-310(c) or 6 (d); 7 8 9 (ii) The movant has served in whole or in part a sentence of imprisonment for the conviction for which the 10 order of actual innocence and exoneration was entered; 11 12 (iii) At the time of serving the sentence for 13 which the actual innocence and exoneration order was 14 15 entered, the movant was not serving and had not been 16 ordered to serve a concurrent or consecutive sentence of imprisonment for a separate conviction; and 17 18 19 (iv) The court entered findings of fact and 20 conclusions of law establishing factual innocence of the 21 original and related offenses under W.S. 7-12-317. 22

1 (b) Subject to the appropriation of funds by the 2 legislature and other limitations of this section, a movant 3 who meets the eligibility criteria in subsection (a) of 4 this section shall be provided compensation in the amount 5 of one hundred dollars (\$100.00) per day while actually 6 incarcerated not to exceed a total of five hundred thousand 7 dollars (\$500,000.00).

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9 (c) The office of attorney general shall administer 10 the provision of compensation provided for in this section 11 and may promulgate rules as it deems necessary to implement 12 this section.

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14 (d) A movant who meets the eligibility criteria 15 established in subsection (a) of this section may present 16 an application not more than two (2) years from entry of 17 the order of actual innocence and exoneration, regardless of whether the order of actual innocence and exoneration 18 19 was entered before or after July 1, 2015, to the office of 20 the attorney general. If the attorney general determines 21 the movant is eligible for compensation under this section and the amount of the compensation under subsection (b) of 22 23 this section is equal to or less than fifty thousand

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dollars (\$50,000.00), payment to the movant shall be made 1 2 in a lump sum. If the movant is determined eligible for 3 compensation under subsection (b) of this section in excess 4 of fifty thousand dollars (\$50,000.00), the movant shall 5 receive an initial payment of fifty thousand dollars (\$50,000.00) and the remaining amount shall be provided by 6 distributing funds appropriated for purposes of this 7 8 section to the state treasurer to annuitize the remaining 9 balance. The annuity shall provide equal payments to the 10 movant of fifty thousand dollars (\$50,000.00) annually until the balance has been paid. The annuity shall provide 11 12 it shall not be sold, discounted, or used as that 13 securitization for loans or mortgages. The annuity may 14 include a beneficiary designated by the movant. In the 15 event the movant dies before the expiration of the two (2) 16 year period for presenting an application, the movant's 17 estate or person claiming to be the distributee of the movant's property as established by affidavit pursuant to 18 19 W.S. 2-1-201 or district court decree pursuant to W.S. 20 2-1-205 may present an application for the compensation 21 which is authorized to be provided under subsection (b) of this section provided the application is presented within 22 23 the time specified in this subsection. The estate or

1 distributee shall not be eligible for compensation unless 2 the estate or distributee complies with all provisions and 3 requirements of this section which would have applied to 4 the movant.

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6 (e) A movant may not receive compensation under this 7 section if he has any action pending, has obtained a 8 judgment or has settled an action or claim against a 9 governmental entity or an employee of any governmental 10 entity involving the conviction for which the order of 11 actual innocence and exoneration was entered.

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(f) Compensation to a movant under this section may not be offset by any expenses incurred by a governmental entity, including expenses to secure custody of the movant and expenses to feed, clothe, house and provide medical care for the movant.

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(g) A movant who receives compensation under this section may not bring any action against any governmental entity or an employee of any governmental entity involving the conviction for which the order of actual innocence and exoneration was entered.

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2 (h) A movant shall not receive compensation under 3 this section unless the movant signs a release and waiver 4 on behalf of himself and his heirs, successors and assigns, forever releasing all governmental entities and their 5 employees in the employees' official and individual 6 capacity from all present and future claims involving the 7 conviction for which the order of actual innocence and 8 9 exoneration was entered. The release shall provide that 10 any payment to the movant does not constitute a waiver of 11 sovereign immunity. 12 (j) The provisions of the Wyoming Administrative 13 14 Procedure Act are not applicable to the grant or denial of 15 compensation under this section. 16 17 (k) The payment of compensation under this section does not constitute a waiver of sovereign immunity. 18

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20 (m) A movant is not entitled to compensation unless 21 sufficient funds have been appropriated to the office of 22 the attorney general to provide compensation authorized 23 under this section.

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2 (n) An interest in payment of compensation under this 3 section is not subject to execution or attachment by 4 trustee process or otherwise, in law or equity, or under 5 any other process whatsoever.

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7-12-317. Establishment of factual innocence.

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If the court entered an order of actual innocence 9 (a) 10 and exoneration under W.S. 7-12-310, the movant shall be entitled to a hearing to determine whether the movant is 11 12 factually innocent if the movant files a request for the 13 hearing within sixty (60) days after entry of an order of 14 actual innocence and exoneration. If a request for a factual innocence hearing is timely filed, the court shall 15 16 conduct a review of all past criminal proceedings involving the movant's original conviction and any new evidence 17 relevant to the movant's claim of factual innocence. If the 18 19 court finds, by a preponderance of the evidence, that the 20 movant is factually innocent of the original and related 21 offenses, the court shall enter findings of fact and conclusions of law establishing the movant's factual 22 23 innocence of the original and related offenses. The court

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shall enter a dispositive order within one hundred fifty 1 2 (150) days after the motion for a factual innocence hearing 3 is filed. 4 5 (b) For purposes of this section, factual innocence of original and related offenses means the movant did not: 6 7 8 (i) Engage in conduct for which the movant was convicted; 9 10 11 (ii) Engage in conduct in connection with the 12 original offense for which the movant was convicted which would constitute a lesser included offense or another 13 felony arising out of the same conduct; or 14 15 16 (iii) Engage in any conduct which would constitute aiding and abetting, attempt or conspiracy to 17 commit the offense for which the movant was originally 18 19 convicted or any lesser included offense thereof. 20 Section 2. W.S. 1-39-104(a), 1-39-120 by creating a 21 new subsection (b), 7-12-303(a) by creating a new paragraph 22 (iii) and by amending and renumbering (iii) as (iv) and 23

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1 7-12-310 by creating new subsections (e) and (f) are
2 amended to read:

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4 1-39-104. Granting immunity from tort liability;
5 liability on contracts; exceptions.

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(a) A governmental entity and its public employees 7 8 while acting within the scope of duties are granted 9 immunity from liability for any tort except as provided by 10 W.S. 1-39-105 through 1-39-112 and limited by W.S. 1-39-121. Any immunity in actions based on a contract 11 12 entered into by a governmental entity is waived except to 13 the extent provided by the contract if the contract was 14 within the powers granted to the entity and was properly 15 executed and except as provided in W.S. 1-39-120(b) and 16 1-39-121. The claims procedures of W.S. 1-39-113 apply to contractual claims against governmental entities. 17

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1-39-120. Exclusions from waiver of immunity.
(b) Notwithstanding the waiver of immunity for tort
liability provided by W.S. 1-39-105 through 1-39-112 or the
waiver of immunity in actions based on contract provided by

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1 W.S. 1-39-104, a governmental entity and its public 2 employees while acting within the scope of duties are 3 immune from a civil action in tort, contract or otherwise 4 alleging, in whole or in part, improper denial of 5 compensation provided for in W.S. 7-12-316. 6 7 7-12-303. New trial; motion for post-conviction 8 testing of DNA; motion contents; sufficiency of 9 allegations, consent to DNA sample; definitions, 10 compensation. 11 12 (a) As used in this act: 13 14 (iii) "Governmental entity" means a governmental 15 entity as defined by W.S. 1-39-103; 16 17 (iii) (iv) "This act" means W.S. 7-12-302 through 18 7-12-3157-12-317. 19 20 7-12-310. Order following testing. 21

1	(e) Subject to subsection (f) of this section, any
2	order of expungement entered pursuant to this section shall
3	be stayed until the later of the following:
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5	(i) If the movant has applied for compensation
6	under W.S. 7-12-316, until a dispositive order is entered
7	under W.S. 7-12-317 and the time for appeal has expired or,
8	if appealed, upon issuance of a final order or mandate by
9	the Wyoming supreme court; or
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11	(ii) The time for applying for compensation
12	under W.S. 7-12-316 has expired.
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14	(f) An order of expungement pursuant to this section
15	shall not be subject to the provisions of subsection (e) of
16	this section if the movant waives all eligibility to
17	receive compensation under W.S. 7-12-316. The waiver shall
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	be filed with the court issuing the order of actual
19	be filed with the court issuing the order of actual innocence and exoneration.
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23 account within the auditor's office to be used for payments

made pursuant to W.S. 7-12-316. Funds within the account 1 2 shall be expended as directed by the attorney general in 3 accordance with the provisions of W.S. 7-12-316. 4 Notwithstanding any other provision of law, this appropriation shall not be transferred or expended for any 5 other purpose. Notwithstanding W.S. 9-2-1008, 9-2-1012(e) 6 and 9-4-207, any unexpended, unobligated funds remaining 7 8 from this appropriation shall not revert until further action of the legislature. This appropriation shall not be 9 included in the auditor's 2017-2018 standard biennial 10 11 budget request. 12 13 Section 4. This act is effective July 1, 2015.

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(END)

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