

Assembly Bill No. 110

CHAPTER 619

An act to add Section 17156 to the Revenue and Taxation Code, relating to miscarriage of justice, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 110, Baugh. Miscarriage of justice: compensation.

Existing law provides for making a claim for money or damages against the state for an injury for which the state is liable.

This bill would appropriate \$620,000 from the General Fund to the Department of Justice for payment to Kevin Lee Green in order to recompense him for a miscarriage of justice and wrongful incarceration by the state. The bill would make extensive findings and declarations supporting this appropriation. The bill would provide that this compensation is tax exempt, as specified, and apply this provision to taxable years beginning on or after January 1, 1999.

The bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature makes the following findings and declarations:

(1) On September 30, 1979, Kevin Lee Green's wife, Dianna Green, was attacked and brutally bludgeoned.

(2) Dianna Green was nine months pregnant with Kevin Lee Green's baby at the time of the attack.

(3) Dianna and Kevin Lee Green's unborn baby died as a result of the attack on Dianna Green.

(4) Dianna Green was in a coma for one month following the attack, and emerged from the coma unable to remember many details from her past, and having suffered considerable brain damage.

(5) Kevin Lee Green was charged with the murder of his unborn child and the attempted murder of his wife.

(6) Dianna Green, despite having suffered serious brain damage in the attack, and despite having lost much of her memory, was the main witness for the prosecution against Kevin Lee Green.

(7) Kevin Lee Green at all times maintained his innocence and told police and testified that on the night of the attack he went out to get a hamburger and returned approximately 20 minutes later to find his wife on the bed nearly beaten to death.

(8) Kevin Lee Green further testified that, after he returned to his home, he saw a man in a dark van hastily leaving the scene of the crime.

(9) On October 2, 1980, Kevin Lee Green was convicted by a jury in Orange County Superior Court of one count of second degree murder, one count of attempted murder, and two counts of assault with a deadly weapon.

(10) Kevin Lee Green was sentenced to serve 15 years to life in prison for the attack on his wife and death of his unborn baby.

(11) At the time of the attack on Dianna Green, Kevin Lee Green was a corporal in the United States Marine Corps. Kevin Lee Green had intended to make a career of his military service, emulating his father. As a result of the conviction, Kevin Lee Green suffered the further indignity of being discharged from the United States Marine Corps on a less than honorable basis, thereby preventing him from completing his chosen career and from receiving retirement and other military benefits.

(12) Through DNA evidence and a full confession by Gerald Parker, the man who was actually guilty of the attack on Dianna Green, it has been conclusively established that Kevin Lee Green was not guilty of any of the charges against him.

(13) As a result of the DNA evidence and the full confession of Gerald Parker, on June 20, 1996, the Honorable Robert Fitzgerald, Judge of the Superior Court for the County of Orange, granted Kevin Lee Green's petition for writ of habeas corpus and ordered Kevin Lee Green immediately released from prison.

(14) The Honorable Robert Fitzgerald further found and ordered that Kevin Lee Green was factually innocent of all charges and that all allegations against him relating to the September 30, 1979, attack on Dianna Green were untrue.

(15) Despite the knowledge that his chances for parole would be greatly increased if he falsely evinced remorse for a crime that he knew he did not commit, Kevin Lee Green refused to lie.

(16) During his incarceration, Kevin Lee Green was denied parole on four separate occasions on account of the fact that he steadfastly maintained his innocence and protested that he had been wrongly accused.

(17) While incarcerated, Kevin Lee Green attempted, unsuccessfully, to raise the money to obtain his own DNA test in order to reopen his case, and despite the fact that court records showed that Kevin Lee Green passed at least one, and perhaps another, polygraph test before his trial took place, police investigators ignored his requests to reopen his case.



(18) Kevin Lee Green consequently spent approximately 17 years, from age 21 to 37, in prison for crimes he did not commit.

(19) During his incarceration, Kevin Lee Green missed the funerals of both of his grandmothers, and his grandfather, and the weddings of his brother and his sister.

(20) Under current California law, the maximum amount Kevin Lee Green may receive in recompense for his unjust, tragic incarceration is ten thousand dollars (\$10,000).

(21) Considering the totality of the circumstances, even though there is no legally responsible entity that is liable to Mr. Green, equity and justice dictate that a miscarriage of justice occurred and that agents of the state unknowingly participated in that miscarriage of justice.

(b) It is the intent of the Legislature, by enacting this act, to hereby recompense Kevin Lee Green for having been the victim of a miscarriage of justice as outlined in subdivision (a).

(c) The sum of six hundred twenty thousand dollars (\$620,000) is hereby appropriated from the General Fund to the Department of Justice for payment to Kevin Lee Green as compensation for having been the victim of a miscarriage of justice.

(d) The Controller is hereby directed to draw warrants upon the General Fund in the sum of six hundred twenty thousand dollars (\$620,000) in favor of Kevin Lee Green, and the Treasurer is hereby directed to pay the same out of funds in the General Fund not otherwise appropriated.

SEC. 2. Section 17156 is added to the Revenue and Taxation Code, to read:

17156. (a) Gross income shall not include any amount received as compensation in any taxable year by a taxpayer pursuant to Assembly Bill 110 of the 1999–2000 Regular Session.

(b) This section shall apply to taxable years beginning on or after January 1, 1999.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Through no one's fault, an innocent man was wrongfully incarcerated and had spent approximately 17 years of productive life taken from him, despite his continual statements of his innocence. This bill seeks to offer a degree of compensation for those lost years. In order to rectify an egregious wrong as soon as possible, it is necessary that this act go into immediate effect.

