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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



ENROLLED

Com. Sub. for Com. Sub. for
SENATE BILL NO. 109

(By Senators Tomblin, Mr. President, and
Sprouse, By Request of the Executive)



PASSED March 11, **2000**
In Effect from **Passage**

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CLERK OF THE SENATE
SPOKANE, IDAHO

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COMMITTEE SUBSTITUTE

FOR

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Senate Bill No. 109

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed March 11, 2000; in effect from passage.]

AN ACT to amend chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to inmate litigation reform; defining terms; requiring exhaustion of administrative remedies; providing for full payment of filing fees; requiring judicial review of initial pleading; requiring dismissal of actions; permitting hearings at correctional facilities; limiting recovery; allowing forfeiture of good-time credit; and providing for payment of pending judgments.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-a, to read as follows:

ARTICLE 1A. WEST VIRGINIA PRISONER LITIGATION REFORM ACT.

§25-1A-1. Definitions.

- 1 As used in this article,
- 2 (a) "Civil action" means any action or appeal from an
3 action filed by any current or former inmate or his or her
4 personal representative with respect to conditions of
5 confinement, including, but not limited to, petitions for
6 extraordinary writs, civil actions under 42 U.S.C. §1983
7 and other federal and state laws and negligence actions.
8 Actions that exclusively concern an inmate's sentence or
9 conviction are not subject to the requirements of this
10 article.
- 11 (b) "Correctional facility" means any county jail, re-
12 gional jail or any facility operated by the division of
13 corrections, the West Virginia regional jail and correc-
14 tional facility authority or division of juvenile services for
15 the confinement of inmates.
- 16 (c) "Inmate" means any person confined in a correctional
17 facility who is accused of, convicted of, sentenced for or
18 adjudicated delinquent for violations of criminal law or
19 the terms and conditions of parole, probation, pretrial
20 release or a diversionary program.

§25-1A-2. Mandatory exhaustion of administrative remedies.

- 1 (a) An inmate may not bring a civil action until the
2 administrative remedies promulgated by the facility have
3 been exhausted: *Provided*, That the remedies promulgated
4 by the facility will be deemed completed within sixty days

5 from the date the inmate filed his or her initial complaint
6 if the inmate fully complied with the requirements for
7 filing and appealing the administrative complaint.

8 (b) The commissioner of the division of corrections and
9 the executive director of the regional jail authority shall
10 propose joint legislative rules for promulgation in accor-
11 dance with the provisions of article three, chapter twenty-
12 nine-a of this code to establish administrative rules for
13 processing inmate complaints concerning food quality,
14 health care, non-violent or non-sexual conduct of employ-
15 ees or contractors of the division of corrections or regional
16 jail authority, loss of privileges and other general com-
17 plaints about daily living conditions which do not directly
18 and seriously concern an inmate's physical health or
19 security.

20 (c) Notwithstanding any other provision of this code, no
21 inmate shall be prevented from filing an appeal of his or
22 her conviction or bringing a civil or criminal action
23 alleging past, current or imminent physical or sexual
24 abuse; if such a civil or criminal action is ultimately
25 dismissed by a judge as frivolous, then the inmate shall
26 pay the filing costs associated with the civil or criminal
27 action as provided for in this article.

§25-1A-3. Payment of filing fees and court costs.

1 (a) Notwithstanding any other provision of this code, an
2 inmate may not file with any court of this state a civil
3 action without the payment of filing fees as set forth in
4 this section: *Provided*, That the collection of the full filing
5 fee is not required before the inmate's claim may be filed
6 and served.

7 (b) When an inmate seeks to file a civil action as an
8 indigent and requests that customary filing fees and court
9 costs be waived, the clerk of the court in which the inmate
10 has filed his or her complaint shall notify the warden or

11 designated representative of the facility in which the
12 inmate resides of the inmate's request and the amount of
13 filing costs. Once the facility receives notification, the
14 custodian of the inmate's trust account shall immediately
15 compute the average monthly balance of the inmate's trust
16 account over the preceding three-month period and deduct
17 from the inmate's trust account thirty percent of the
18 average balance as a partial filing fee. The custodian shall
19 deduct that same amount or up to thirty percent of the
20 balance of the inmate's trust account, whichever is greater,
21 on a monthly basis until the filing fee is paid in full.

22 (c) The custodian of the inmate's trust account shall
23 place all funds deducted from the inmate's trust into a
24 special account designated as the "filing fees account", to
25 be established for each correctional facility and to be
26 administered by the custodian and warden or chief
27 administrator of each facility. Biannually the custodian
28 and warden or chief administrator of the filing fees
29 account shall distribute the balance of the account, minus
30 any expense in maintaining that account, to the circuit
31 clerk of the county in which the state correctional facility
32 resides as a filing fee for all suits filed by indigent inmates
33 of that facility.

§25-1A-4. Judicial review of initial pleading; dismissal.

1 (a) The court shall, prior to issuance of process, review
2 the complaint, petition or other initial pleading to deter-
3 mine whether a civil action is frivolous or malicious as
4 defined in subsection (b) of this section and fails to state a
5 claim for which relief can be granted or seeks monetary
6 relief from a party who is immune from such relief. If the
7 complaint, petition or other initial pleading is frivolous or
8 malicious, fails to state a claim for which relief can be
9 granted or seeks monetary relief from a party who is
10 immune from such relief, the court shall not issue process
11 and shall dismiss the case.

12 (b) A civil action is frivolous or malicious if it:

13 (1) Has no arguable basis in fact or law; or

14 (2) Is substantially similar to a previous civil action in
15 which the inmate did not substantially prevail, either in
16 that it is brought against the same parties or in that the
17 civil action arises from the same operative facts of a
18 previous civil action; or

19 (3) Has been brought with the intent to harass an oppos-
20 ing party.

§25-1A-5. Hearings.

1 (a) To the extent practicable, a court shall conduct
2 pretrial proceedings in any civil action in which an in-
3 mate's participation is required or permitted by telephone,
4 video conference or other telecommunications technology
5 without removing the inmate from the facility in which an
6 inmate is confined.

7 (b) Subject to the agreement of the official with custody
8 over an inmate, the court may conduct hearings at the
9 correctional facility in which an inmate is confined. To
10 the extent practicable, the court shall allow counsel to
11 participate by telephone, video conference or other
12 communications technology in any hearing held at the
13 facility.

14 (c) No court may compel the commissioner of the divi-
15 sion of corrections or warden of any correctional facility
16 operated by the division of corrections or the executive
17 director of the West Virginia regional jail and correctional
18 facility authority or any administrator of any facility
19 operated by the West Virginia regional jail and correc-
20 tional facility authority to transport to court any inmate
21 having a maximum security classification if the warden or
22 administrator of the facility tenders to the court an

23 affidavit attesting to the custody level of the inmate and
24 stating that, in the warden's or administrator's opinion,
25 the inmate possesses a substantial risk of escape if trans-
26 ported. If a warden or administrator files an affidavit,
27 then the warden or administrator shall, upon demand of
28 the court, provide suitable room to conduct any trial or
29 hearings at which an inmate's presence is required. The
30 warden or administrator shall allow the court, counsel and
31 all court personnel access to the correctional facility to
32 conduct the proceedings the court considers necessary.

§25-1A-6. Loss of good-time credit.

1 Upon a finding by the court that a civil action is frivo-
2 lous, malicious or intended to harass the party against
3 whom the civil action is brought or that the inmate
4 knowingly testified falsely or otherwise knowingly pre-
5 sented false evidence or information to the court, the court
6 may order that the inmate forfeit earned good-time credit.
7 A court may take additional evidence to determine the
8 appropriate amount of good-time credit to be forfeited.

§25-1A-7. Court-ordered payments.

1 Any compensatory damages awarded to an inmate in
2 connection with a civil action, after deduction for any
3 attorney fees, shall be paid directly to satisfy any out-
4 standing court-ordered payments pending against the
5 inmate, including, but not limited to, restitution or child
6 support. The remainder of the award after full payment of
7 all pending court orders shall be forwarded to the inmate.

§ 25-1A-8. Attorney fees.

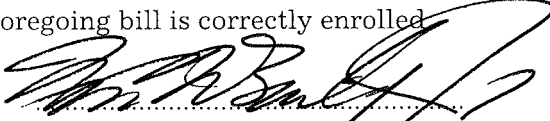
1 (a) In any action based upon prison conditions brought
2 under any statute or constitutional provision, if attorney
3 fees are recoverable pursuant to any state statute, no
4 attorney fees shall be awarded to a prisoner, except to the
5 extent that:

6 (1) The fees were directly and reasonably incurred by an
7 attorney in proving an actual violation of prisoner's rights
8 protected by the constitution or statute; and

9 (2) The amount of the fees is proportionately related to
10 the court-ordered relief for the violation, or the fees were
11 directly and reasonably incurred in enforcing the relief
12 ordered for the violation.

13 (b) Nothing in this section shall prohibit a prisoner from
14 entering into an agreement to pay an attorney fee in excess
15 of the amount authorized in this section, if the fee is paid
16 by the prisoner rather than by another party to a civil
17 action.

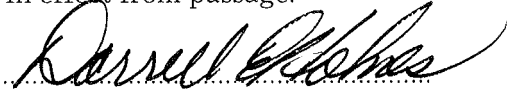
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled

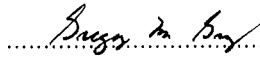

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Chairman Senate Committee

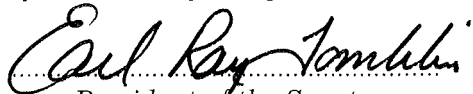

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Chairman House Committee

Originating in the Senate.

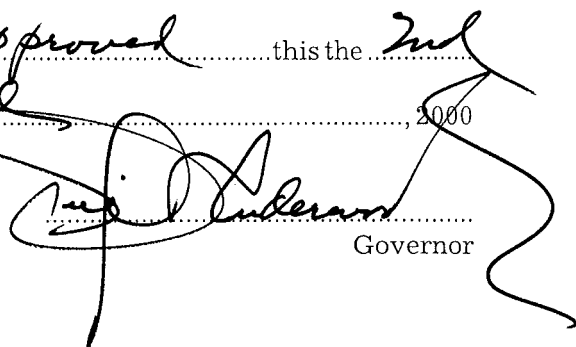
In effect from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

The within..... *approved* this the *2nd*
Day of *April* 2000

.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/02

Time 3:00 pm