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HOUSE BILL 672

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Joe Thompson

AN ACT

RELATING TO CORRECTIONS; PROVIDING FOR RESTRICTIONS ON CIVIL
ACTIONS INITIATED BY INMATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. STATE INMATES--RESTRICTIONS ON CIVIL ACTIONS
INITIATED BY INMATES.--

A. A state inmate who seeks to file a civil
action, including a petition for a writ of habeas corpus or an
appeal of a judgment in a civil action, without prepayment of
a filing fee, shall submit an affidavit to the court
requesting to proceed as an indigent. The affidavit shall be
accompanied by a certified copy of the inmate's trust fund
account statement for the six-month period immediately
preceding the filing of the civil action.

B. If the court allows the inmate to proceed as an

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1 indigent, the inmate shall still be required to pay the full
2 amount of the filing fee. The court shall assess and collect
3 an initial, partial filing fee that is twenty percent of the
4 average monthly deposits to the inmate's trust fund account or
5 the average monthly balance in the inmate's trust fund account
6 for the six-month period immediately preceding the inmate's
7 filing of a civil action, whichever amount is greater.
8 Following payment of the initial, partial filing fee, the
9 inmate shall be required to make monthly payments that equal
10 twenty percent of the average monthly deposits to the inmate's
11 trust fund account for the six-month period immediately
12 preceding the inmate's filing of the civil action. The
13 correctional facility where the inmate is incarcerated shall
14 forward the monthly payments from the inmate's trust fund
15 account to the clerk of the court until the filing fee is paid
16 in full.

17 C. Notwithstanding the provisions of Subsection B
18 of this section, an inmate shall not be prohibited from filing
19 a civil action because the inmate does not have the means to
20 pay an initial, partial filing fee. In no event shall the
21 amount of the filing fee collected from an inmate exceed the
22 amount of a filing fee for a civil action that is authorized
23 by statute or court rule.

24 D. Notwithstanding the payment or partial payment
25 of a filing fee by an inmate, the court on its own motion or

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1 on the motion of a party shall dismiss a complaint initiated
2 by an inmate in a civil action if the court determines that:

3 (1) the inmate's affidavit alleging indigency
4 is false; or

5 (2) the complaint is frivolous, malicious,
6 fails to state a claim upon which relief can be granted or
7 seeks damages from a defendant who is immune from an action
8 for damages.

9 E. If an inmate files a civil action in which the
10 inmate seeks damages from a governmental entity or an officer
11 or employee of a governmental entity, the court shall review
12 the complaint as soon as possible after entering the civil
13 action on its docket. On review, the court shall dismiss the
14 complaint or any portion of the complaint if the court
15 determines that the complaint is frivolous, malicious, fails
16 to state a claim upon which relief can be granted or seeks
17 damages from a defendant who is immune from an action for
18 damages.

19 F. If an inmate has, on three or more previous
20 occasions, initiated a civil action while incarcerated in this
21 state, and those complaints were dismissed on the grounds that
22 the complaints were frivolous, malicious or failed to state a
23 claim upon which relief could be granted, the inmate shall not
24 be allowed to file additional civil actions. Notwithstanding
25 the provisions of this subsection, an inmate may be allowed to

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1 file a civil action if:

2 (1) the inmate is in imminent danger of
3 serious physical injury; or

4 (2) an attorney licensed in this state
5 certifies that the civil action states a cognizable claim and
6 that there is a sound basis in fact and law for filing the
7 civil action.

8 G. An inmate shall not be allowed to file a civil
9 action that alleges mental or emotional injuries suffered
10 while the inmate was incarcerated, unless the inmate offers
11 proof of a physical injury.

12 H. An inmate shall not be allowed to represent
13 another inmate in a civil action, unless the court finds there
14 is good cause for the representation and states that finding
15 in the record of the proceedings.

16 I. Pretrial proceedings for a civil action
17 initiated by an inmate shall, to the extent that is
18 practicable, be conducted by telephone or video conference at
19 the correctional facility where the inmate is incarcerated.

20 J. Damages awarded to an inmate pursuant to a
21 civil action initiated by the inmate shall be held in escrow
22 by the court until the court determines if outstanding
23 restitution orders are pending against the inmate. If the
24 court determines that outstanding restitution orders are
25 pending against the inmate, the court shall order that the

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1 damages awarded to the inmate in the civil action be used to
2 satisfy the amount owed pursuant to the restitution orders.
3 After the restitution orders are satisfied, any additional
4 amount remaining from the damages awarded to the inmate shall
5 be forwarded to the correctional facility where the inmate is
6 incarcerated or was most recently incarcerated prior to his
7 release and that amount shall be applied to the reasonable
8 cost of incarcerating the inmate. After the reasonable costs
9 of incarcerating the inmate are satisfied, any additional
10 amount remaining from the damages awarded to the inmate shall
11 be credited to the inmate's trust fund account or provided to
12 the former inmate if he has been released from custody.

13 Section 2. EFFECTIVE DATE. --The effective date of the
14 provisions of this act is July 1, 1999.