

JAN 25 2012

A BILL FOR AN ACT

RELATING TO PRISON LITIGATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 607, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§607- Proceedings in forma pauperis for prisoners.

5 (a) Any court of the State may authorize the commencement,
6 prosecution, or defense of any suit, action, or proceeding or
7 appeal therein, without prepayment of fees or security
8 therefore, by a prisoner who is incarcerated in a correctional
9 facility if that prisoner submits a statement, certified by the
10 correctional facility, of all financial assets for the previous
11 six months that the prisoner possesses or possessed and an
12 affidavit or declaration given under penalty of perjury that the
13 prisoner is unable to pay such fees or give security therefor.

14 A copy of the complaint or claim in any suit, action, or
15 proceeding must accompany any application for in forma pauperis.

16 (b) An appeal may not be taken in forma pauperis if the
17 trial court certifies in writing that the appeal is not taken in
18 good faith.

1 (c) If a prisoner brings a civil action or files an appeal
2 in forma pauperis not in compliance with subsection (a) or if
3 the court denies the in forma pauperis application, the prisoner
4 shall be required to pay the full amount of a filing fee. The
5 court shall assess and, when funds exist, collect, as a partial
6 payment of any court fees required by law, an initial partial
7 filing fee of twenty per cent of the greater of:

8 (1) The average monthly deposits to the prisoner's
9 account; or

10 (2) The average monthly balance in the prisoner's account
11 for the six-month period immediately preceding the
12 filing of the complaint or notice of appeal.

13 After payment of the initial partial filing fee, the prisoner
14 shall be required to make monthly payments of twenty per cent of
15 the preceding month's income credited to the prisoner's account.
16 The agency having custody of the prisoner shall forward payments
17 from the prisoner's account to the clerk of the court each time
18 the amount in the account exceeds \$10 until the filing fees are
19 paid. In no event shall the filing fee collected exceed the
20 amount of fees permitted by statute for the commencement of a
21 civil action or an appeal of a civil action or criminal
22 judgment.

1 (d) Any prisoner who has had four or more in forma
2 pauperis civil actions or appeals dismissed by any state or
3 federal court as frivolous, malicious, or for failure to state a
4 claim must pay the full filing fee in advance for any further
5 civil actions during the time the prisoner remains incarcerated,
6 unless the prisoner is in imminent danger of serious physical,
7 mental, or emotional injury; provided that the prepayment
8 requirement may be waived at the discretion of the court in the
9 interest of justice. With the exception of the preceding
10 circumstance, in no event shall a prisoner be prohibited from
11 bringing a civil action or appealing a civil or criminal
12 judgment for the reason that the prisoner has no assets and no
13 means by which to pay the initial partial filing fee.

14 (e) Upon compliance with subsection (a) and the prepayment
15 of any partial filing fee as may be required under subsection
16 (d), the court may direct payment by the State of the expenses
17 of:

- 18 (1) Printing the record on appeal if such printing is
19 required by the appellate court; and
20 (2) Preparing a transcript of proceedings if such
21 transcript is required by the appellate court.

1 Such expenses shall be paid when authorized by the
2 administrative director of the courts.

3 (f) Notwithstanding any filing fee, or any portion
4 thereof, that may have been paid, the court shall dismiss the
5 case at any time if the court determines that:

6 (1) The allegation of poverty is untrue; or

7 (2) The action or appeal:

8 (A) Is frivolous or malicious;

9 (B) Fails to state a claim on which relief may be
10 granted; or

11 (C) Seeks monetary relief against a defendant who is
12 immune from such relief.

13 (h) Judgment may be rendered for costs at the conclusion
14 of the suit or action as in other proceedings, but the State
15 shall not be liable for any of the costs thus incurred. If the
16 State has paid the cost of a stenographic transcript or printed
17 record for the prevailing party, the cost shall be remitted in
18 favor of the State. If the judgment against a prisoner includes
19 the payment of costs under this subsection, the prisoner shall
20 be required to pay the full amount of the costs ordered. The
21 prisoner shall be required to make payments for costs under this
22 subsection in the same manner as is provided for filing fees

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1 under subsection (c). In no event shall the costs collected
2 exceed the amount of the costs ordered by the court.

3 (i) As used in this section, the term "prisoner" means any
4 person incarcerated or detained in any facility who is accused
5 of, convicted of, or sentenced for, violations of criminal law
6 or the terms and conditions of parole, probation, pretrial
7 release, or diversionary program. The term does not apply to
8 juveniles incarcerated at youth correctional facilities."

9 SECTION 2. New statutory material is underscored.

10 SECTION 3. This Act shall take effect on its approval.

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INTRODUCED BY: 

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BY REQUEST

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S.B. NO. 2736

Report Title:

Prison Litigation

Description:

Imposes certain limitations and conditions on in forma pauperis prisoner lawsuits.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: ATTORNEY GENERAL

TITLE: A BILL FOR AN ACT RELATING TO PRISON LITIGATION.

PURPOSE: The bill creates a state law equivalent to a portion of the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, 110 Stat. 1321, relating specifically to portions of the PLRA codified in 28 U.S.C. § 1915, that imposes certain limitations and conditions on in forma pauperis prisoner lawsuits. A prisoner may bring a court action "in forma pauperis," i.e., without having to pay any court fees and costs if the prisoner is able to show that he or she is unable to pay such fees and costs. However, the prisoner will be required to pay fees and costs if the prisoner does not provide the proper evidence of inability to pay or if the prisoner has had four or more in forma pauperis actions or appeals dismissed as frivolous or malicious unless the prisoner is in imminent danger of serious injury.

MEANS: Add a new section to chapter 607, Hawaii Revised Statutes.

JUSTIFICATION: Congress enacted the Prison Litigation Reform Act of 1995 (PLRA) in 1996 in the wake of a sharp rise in prisoner litigation in federal courts. The PLRA contains a variety of provisions designed to bring this litigation under control. One of those provisions imposes certain conditions on lawsuits prisoners may bring without paying any court fees or costs.

Currently, an in forma pauperis application only requires the word of the applicant that he or she is unable to pay. This bill would

prevent prisoners from proceeding in forma pauperis by a fraudulent assertion that they are unable to pay court fees and costs since the bill requires that the prisoner submit a statement certified by the correctional facility that the prisoner does not have the financial means to pay.

The bill also will curtail frivolous lawsuits since the prisoner will have to pay the full filing fee in advance of any further actions if the prisoner has had four or more in forma pauperis actions or appeals dismissed as frivolous, malicious, or for failure to state a claim, unless the prisoner is in imminent danger of serious injury. A prisoner will be more circumspect in the number and type of claims he or she brings if the filing of multiple meritless actions will result in having to pay all fees and costs in future actions. A prisoner will not be prohibited from bringing a civil action or appealing a judgment if the prisoner has no means to pay the initial partial filing fee.

Impact on the public: Since lawsuits will be reduced, the public in general will benefit from the savings of public funds.

Impact on the department and other agencies: This bill will reduce the number of lawsuits filed against the State and the Department of Public Safety.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	Department of Public Safety and the Judiciary.
EFFECTIVE DATE:	Upon approval.