

JAN 16 2014

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# 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. (a)

5 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 therefor,  
8 by a prisoner who is incarcerated in a correctional facility if  
9 that prisoner submits a statement, certified by the correctional  
10 facility, of all financial assets for the previous six months  
11 that the prisoner possesses or possessed and an affidavit or  
12 declaration given under penalty of perjury that the prisoner is  
13 unable to pay such fees or give security therefor. A copy of  
14 the complaint or claim in any suit, action, or proceeding shall  
15 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 or malicious or for failure to state  
4 a claim shall 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 a printed record is  
19        required by the appellate court; and  
20        (2) Preparing a transcript of proceedings if a transcript  
21        is required by the appellate court.



1 The expenses shall be paid when authorized by the administrative  
2 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 (g) 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



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

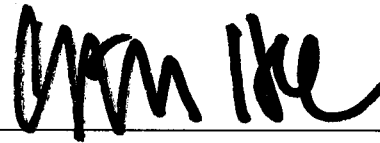
3 (h) As used in this section, the term "prisoner" means any  
4 person incarcerated or detained in any facility who is accused  
5 of, convicted of, or sentenced for, violations of criminal law  
6 or the terms and conditions of parole, probation, pretrial  
7 release, or diversionary program. The term 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 upon its approval.

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INTRODUCED BY: \_\_\_\_\_



# S.B. NO. 2251

**Report Title:**

Prison Litigation; In Forma Pauperis

**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.*

