

JAN 20 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. (a)

5 Any court of the State may authorize proceedings in forma
6 pauperis for the commencement, prosecution, or defense of any
7 suit, action, or proceeding or appeal therein, without
8 prepayment of fees or security therefore, by a prisoner who is
9 incarcerated in a correctional facility; provided that the
10 prisoner submits:

11 (1) A statement, certified by the correctional facility,
12 of all financial assets for the previous six months
13 that the prisoner possesses or possessed; and

14 (2) An affidavit or declaration given under penalty of
15 perjury that the prisoner is unable to pay the fees or
16 give security therefore;



1 provided that an appeal may not be taken in forma pauperis if
2 the trial court certifies in writing that the appeal is not
3 taken in good faith.

4 A copy of the complaint or claim in any suit, action, or
5 proceeding shall accompany any application for in forma
6 pauperis.

7 (b) If a prisoner brings a civil action or files an appeal
8 in forma pauperis that is not in compliance with subsection (a)
9 or if the court denies the in forma pauperis application, the
10 prisoner shall be required to pay the full amount of a filing
11 fee.

12 (c) In lieu of subsection (b), the court shall assess and,
13 when funds exist, collect, as a partial payment of any court
14 fees required by law, an initial partial filing fee of twenty
15 per cent of the greater of:

16 (1) The average monthly deposits to the prisoner's
17 account; or

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

21 After payment of the initial partial filing fee, the prisoner
22 shall be required to make monthly payments of twenty per cent of



1 the preceding month's income credited to the prisoner's account.
2 The agency having custody of the prisoner shall forward payments
3 from the prisoner's account to the clerk of the court each time
4 the amount in the account exceeds \$10 until the filing fees are
5 paid. The filing fee collected shall not exceed the amount of
6 fees permitted by statute for the commencement of a civil action
7 or an appeal of a civil action or criminal judgment.

8 (d) Any prisoner who has four or more of in forma pauperis
9 civil actions or appeals dismissed by any state or federal court
10 as frivolous or malicious, or for failure to state a claim shall
11 prepay the full filing fee as a precondition of proceeding with
12 any further civil actions during the time the prisoner remains
13 incarcerated, unless the prisoner is in imminent danger of
14 serious physical, mental, or emotional injury; provided that the
15 prepayment may be waived at the discretion of the court in the
16 interest of justice.

17 This subsection shall not be interpreted to prohibit a
18 prisoner from bringing a civil action or appealing a civil or
19 criminal judgment for the reason that the prisoner has no assets
20 and no means by which to pay the initial partial filing fee.

21 (e) Upon compliance with subsection (a) and the prepayment
22 of any partial filing fee as may be required under subsection



1 (c), the court may require the State to pay the following
2 expenses if required by the appellate court and authorized by
3 the administrative director of the courts:

4 (1) Printing the record on appeal; and

5 (2) Preparing a transcript of proceedings.

6 (f) Notwithstanding any payment of fees, the court shall
7 dismiss the case at any time if the court determines that:

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

9 (2) The action or appeal:

10 (A) Is frivolous or malicious;

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

13 (C) Seeks monetary relief against a defendant who is
14 immune from monetary relief.

15 (g) Judgment may be rendered for costs at the conclusion
16 of the suit or action as in other proceedings, but the State
17 shall not be liable for any of the costs incurred without regard
18 to the outcome of the suit or action. If the State has paid the
19 cost of a stenographic transcript or printed record for the
20 prevailing party for purposes of an appeal, the cost shall be
21 remitted in favor of the State if the State prevails. If the
22 judgment against a prisoner includes the payment of costs under




1 this subsection, the prisoner shall be required to pay the full
2 amount of the costs ordered in the same manner as is provided
3 for filing fees under subsection (c). In no event shall the
4 costs collected exceed the amount of the costs ordered by the
5 court.

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

12 SECTION 2. New statutory material is underscored.

13 SECTION 3. This Act shall take effect upon its approval.

14 INTRODUCED BY: 



S.B. NO. 2225

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.

