

H. 3/12/98 H. 3/11/98 Judiciary
FILED FEB 25 1998 Amend 100 Cases w/ HB 512

H. 3/12/98 UNFINISHED BUSINESS CALENDAR

REPRINTED

SENATE FILE 2330

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2154)

(P. 599)
Passed Senate, Date 3/10/98
Vote: Ayes 43 Nays 0

(P. 1177)
Passed House, Date 4-1-98
Vote: Ayes 98 Nays 0

Approved April 23, 1998

(P. 1101)
Passed 4-7-98
Vote 48-0

A BILL FOR

1 An Act relating to the filing of civil litigation by prisoners
2 and providing an effective date.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SENATE FILE 2330

S-5151

1 Amend Senate File 2330 as follows:
2 1. Page 1, by striking lines 20 through 27, and
3 inserting the following:
4 "NEW SUBSECTION. 3. In any civil case filed by a
5 petitioner who is an inmate or prisoner, the
6 respondent shall review the petition and, if
7 applicable, file a pre-answer motion asserting, in
8 addition to any other defense that must be asserted in
9 such a motion under the rules of civil procedure, that
10 the action or any portion of the action should be
11 dismissed pursuant to this chapter because the action
12 or any portion of the action is frivolous or
13 malicious, fails to state a claim upon which relief
14 can be granted, or is otherwise subject to dismissal
15 under section 610A.2."
16 2. By renumbering as necessary.

S.F. 2330

Adopted 3/10/98 (P. 599) By ANDY MCKEAN
S-5151 FILED MARCH 5, 1998

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1 Section 1. Section 610.1, Code 1997, is amended by adding
2 the following new unnumbered paragraph:

3 NEW UNNUMBERED PARAGRAPH. Notwithstanding the provisions
4 of this section, the court shall deny the application and
5 affidavit of an inmate who has had three or more actions
6 dismissed pursuant to section 610A.2. Such inmate shall not
7 be permitted to proceed without prepayment of fees, cost, or
8 security pursuant to this chapter.

9 Sec. 2. Section 610A.1, subsection 1, Code 1997, is
10 amended by adding the following new paragraphs:

11 NEW PARAGRAPH. e. If the inmate has unsuccessfully
12 prosecuted three or more frivolous actions in the preceding
13 five-year period, the court may stay the proceeding in
14 accordance with section 617.16.

15 NEW PARAGRAPH. f. If the inmate has had three or more
16 actions dismissed pursuant to section 610A.2, the inmate shall
17 not be permitted to file an action pursuant to chapter 610.

18 Sec. 3. Section 610A.1, Code 1997, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 3. Prior to docketing, if feasible, or
21 otherwise as soon as practicable after docketing, of any civil
22 case filed by a petitioner who is an inmate or prisoner, the
23 court shall screen the petition and dismiss on its own motion
24 any action or any portion of an action that the court is
25 satisfied is frivolous or malicious, fails to state a claim
26 upon which relief can be granted, or is otherwise subject to
27 dismissal under section 610A.2.

28 Sec. 4. Section 610A.2, subsections 1 and 2, Code 1997,
29 are amended to read as follows:

30 1. In addition to the penalty provided in section 610.5,
31 if applicable, or any other applicable penalty under the Code,
32 the court in which an affidavit of inability to pay has been
33 filed may dismiss the an action or appeal that is subject to
34 this chapter, in whole or in part, on a finding of either any
35 of the following:

1 a. The allegation of inability to pay asserted in an
2 accompanying affidavit is false.

3 b. The action, claim, defense, or appeal is frivolous or
4 malicious in whole or in part.

5 c. The inmate or prisoner has knowingly presented false
6 testimony or evidence, or has attempted to create or present
7 false testimony or evidence in support of the action, claim,
8 defense, or appeal.

9 d. The actions of the inmate or prisoner in pursuing the
10 action, claim, defense, or appeal constitute an abuse of the
11 discovery process.

12 2. In determining whether an action or appeal is frivolous
13 or malicious, the court may consider ~~whether-the-claim~~ the
14 following:

15 a. Whether the action, claim, defense, or appeal is
16 without substantial justification, or otherwise has no
17 arguable basis in law or fact, including that the action,
18 claim, defense, or appeal fails to state a claim upon which
19 relief could be granted, or the action, claim, defense, or
20 appeal cannot be supported by a reasonable argument for a
21 change in existing law.

22 b. Whether the action, claim, defense, or appeal is
23 substantially similar to a previous action, claim, defense, or
24 appeal, that was determined to be frivolous or malicious,
25 either in that it is brought against the same party or in that
26 the claim arises from the same operative facts as-a-previous
27 claim-which-was-determined-to-be-frivolous-or-malicious.

28 c. Whether the action, claim, defense, or appeal is
29 intended solely or primarily for harassment.

30 d. The fact that evidentiary support for the action,
31 claim, defense, or appeal is unavailable, or is not likely to
32 be discovered after investigation.

33 e. Whether the action, claim, defense, or appeal is
34 asserted with an improper purpose, including but not limited
35 to, causing an unnecessary expansion or delay in proceedings,

1 increasing the cost of proceedings, or harassing an opponent.

2 f. Whether the defendant is immune from providing the
3 relief sought.

4 Sec. 5. Section 610A.3, Code 1997, is amended to read as
5 follows:

6 610A.3 LOSS-OF-GOOD-CONDUCT-TIME PENALTIES.

7 1. If an action or appeal brought by an inmate or prisoner
8 in state or federal court is determined to be malicious or
9 filed solely to harass or if the inmate or prisoner testifies
10 falsely or otherwise presents false evidence or information to
11 the court in such an action dismissed pursuant to section
12 610A.2, or, if brought in federal court, is dismissed under
13 any of the principles enumerated in section 610A.2, the inmate
14 shall lose be subject to the following penalties:

15 a. The loss of some or all of the good conduct time
16 credits acquired by the inmate or prisoner. Previous
17 dismissals under section 610A.2 may be considered in
18 determining the appropriate level of penalty.

19 b. If the inmate or prisoner has not yet acquired good
20 conduct time credits sufficient to meet the penalty, the order
21 of the court or the disciplinary hearing may apply the penalty
22 to credits to be earned in the future.

23 c. If the inmate or prisoner has no good conduct time
24 credits to deduct, or is not reasonably anticipated to earn
25 enough credits to satisfy the application of the penalty, or
26 if loss of good conduct time credits is not reasonably
27 anticipated to have an effect on the inmate or prisoner, the
28 order of the court or of the disciplinary hearing may also, or
29 in the alternative, deduct up to fifty percent of the average
30 balance of the inmate account under section 904.702 or of any
31 prisoner account.

32 2. The court may make an order deducting the credits or
33 the credits may be deducted pursuant to a disciplinary hearing
34 pursuant to chapter 903A at the facility at which the inmate
35 is held.

1 inmate is subject to a loss of up to fifty percent of the
2 balance in the inmate's account. Credits deducted under these
3 provisions shall not be restored for any reason.

4 A prisoner who brings three or more frivolous actions
5 within five years is subject to the stay of proceedings,
6 pending prepayment or guarantee of costs applicable to all
7 civil litigants under Code section 617.16. In addition, a
8 prisoner who has had three actions dismissed will not be
9 permitted to file in forma pauperis, pursuant to Code chapter
10 610. This provision is modeled after a similar provision
11 added to federal law in 1996.

12 The bill also requires courts to screen prisoner petitions
13 either before docketing, or very soon thereafter, and to
14 dismiss any claims or actions according to the standards in
15 Code section 610A.2.

16 The bill has an immediate effective date and a severability
17 clause.

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SENATE FILE 2330
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2154)

(AS AMENDED AND PASSED BY THE SENATE MARCH 10, 1998)

~~_____~~ - New Language by the Senate

Passed Senate, Date _____ Passed House, ^(P.1177) Date 4/1/98
Vote: Ayes _____ Nays _____ Vote: Ayes 98 Nays 0
Approved April 23, 1998

A BILL FOR

1 An Act relating to the filing of civil litigation by prisoners
2 and providing an effective date.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2330

1 Section 1. Section 610.1, Code 1997, is amended by adding
2 the following new unnumbered paragraph:

3 NEW UNNUMBERED PARAGRAPH. Notwithstanding the provisions
4 of this section, the court shall deny the application and
5 affidavit of an inmate who has had three or more actions
6 dismissed pursuant to section 610A.2. Such inmate shall not
7 be permitted to proceed without prepayment of fees, cost, or
8 security pursuant to this chapter.

9 Sec. 2. Section 610A.1, subsection 1, Code 1997, is
10 amended by adding the following new paragraphs:

11 NEW PARAGRAPH. e. If the inmate has unsuccessfully
12 prosecuted three or more frivolous actions in the preceding
13 five-year period, the court may stay the proceeding in
14 accordance with section 617.16.

15 NEW PARAGRAPH. f. If the inmate has had three or more
16 actions dismissed pursuant to section 610A.2, the inmate shall
17 not be permitted to file an action pursuant to chapter 610.

18 Sec. 3. Section 610A.1, Code 1997, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 3. In any civil case filed by a
21 petitioner who is an inmate or prisoner, the respondent shall
22 review the petition and, if applicable, file a pre-answer
23 motion asserting, in addition to any other defense that must
24 be asserted in such a motion under the rules of civil
25 procedure, that the action or any portion of the action should
26 be dismissed pursuant to this chapter because the action or
27 any portion of the action is frivolous or malicious, fails to
28 state a claim upon which relief can be granted, or is
29 otherwise subject to dismissal under section 610A.2.

30 Sec. 4. Section 610A.2, subsections 1 and 2, Code 1997,
31 are amended to read as follows:

32 1. In addition to the penalty provided in section 610.5,
33 if applicable, or any other applicable penalty under the Code,
34 the court in which an affidavit of inability to pay has been
35 filed may dismiss the an action or appeal that is subject to

1 this chapter, in whole or in part, on a finding of either any
2 of the following:

3 a. The allegation of inability to pay asserted in an
4 accompanying affidavit is false.

5 b. The action, claim, defense, or appeal is frivolous or
6 malicious in whole or in part.

7 c. The inmate or prisoner has knowingly presented false
8 testimony or evidence, or has attempted to create or present
9 false testimony or evidence in support of the action, claim,
10 defense, or appeal.

11 d. The actions of the inmate or prisoner in pursuing the
12 action, claim, defense, or appeal constitute an abuse of the
13 discovery process.

14 2. In determining whether an action or appeal is frivolous
15 or malicious, the court may consider whether-the-claim the
16 following:

17 a. Whether the action, claim, defense, or appeal is
18 without substantial justification, or otherwise has no
19 arguable basis in law or fact, including that the action,
20 claim, defense, or appeal fails to state a claim upon which
21 relief could be granted, or the action, claim, defense, or
22 appeal cannot be supported by a reasonable argument for a
23 change in existing law.

24 b. Whether the action, claim, defense, or appeal is
25 substantially similar to a previous action, claim, defense, or
26 appeal, that was determined to be frivolous or malicious,
27 either in that it is brought against the same party or in that
28 the claim arises from the same operative facts as-a-previous
29 claim-which-was-determined-to-be-frivolous-or-malicious.

30 c. Whether the action, claim, defense, or appeal is
31 intended solely or primarily for harassment.

32 d. The fact that evidentiary support for the action,
33 claim, defense, or appeal is unavailable, or is not likely to
34 be discovered after investigation.

35 e. Whether the action, claim, defense, or appeal is

1 asserted with an improper purpose, including but not limited
2 to, causing an unnecessary expansion or delay in proceedings,
3 increasing the cost of proceedings, or harassing an opponent.

4 f. Whether the defendant is immune from providing the
5 relief sought.

6 Sec. 5. Section 610A.3, Code 1997, is amended to read as
7 follows:

8 610A.3 LOSS-OF-GOOD-CONDUCT-TIME PENALTIES.

9 1. If an action or appeal brought by an inmate or prisoner
10 in state or federal court is determined to be malicious or
11 filed solely to harass or if the inmate or prisoner testifies
12 falsely or otherwise presents false evidence or information to
13 the court in such an action dismissed pursuant to section
14 610A.2, or, if brought in federal court, is dismissed under
15 any of the principles enumerated in section 610A.2, the inmate
16 shall lose be subject to the following penalties:

17 a. The loss of some or all of the good conduct time
18 credits acquired by the inmate or prisoner. Previous
19 dismissals under section 610A.2 may be considered in
20 determining the appropriate level of penalty.

21 b. If the inmate or prisoner has not yet acquired good
22 conduct time credits sufficient to meet the penalty, the order
23 of the court or the disciplinary hearing may apply the penalty
24 to credits to be earned in the future.

25 c. If the inmate or prisoner has no good conduct time
26 credits to deduct, or is not reasonably anticipated to earn
27 enough credits to satisfy the application of the penalty, or
28 if loss of good conduct time credits is not reasonably
29 anticipated to have an effect on the inmate or prisoner, the
30 order of the court or of the disciplinary hearing may also, or
31 in the alternative, deduct up to fifty percent of the average
32 balance of the inmate account under section 904.702 or of any
33 prisoner account.

34 2. The court may make an order deducting the credits or
35 the credits may be deducted pursuant to a disciplinary hearing

1 pursuant to chapter 903A at the facility at which the inmate
2 is held.

3 3. Credits deducted under this section cannot be restored
4 for any reason.

5 Sec. 6. EFFECTIVE DATE. This Act, being deemed of
6 immediate importance, takes effect upon enactment.

7 Sec. 7. SEVERABILITY. If this Act, or any portion of this
8 Act, is held to be unconstitutional, the remainder of this Act
9 shall remain in effect to the fullest extent possible.

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SENATE FILE 2330

H-8512

- 1 Amend Senate File 2330, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 3, by striking lines 21 through 31 and
4 inserting the following:
5 "b. If the inmate or prisoner has no good conduct
6 time credits to deduct, the order of the court or the
7 disciplinary hearing may deduct up to fifty percent of
8 the average".
9 2. Page 4, by striking lines 3 and 4.
10 3. By renumbering as necessary.

By COMMITTEE ON JUDICIARY
LAMBERTI of Polk, Chairperson

H-8512 FILED MARCH 19, 1998

Adopted 4-1-98 (P. 1176)

SENATE FILE 2330

H-8845

- 1 Amend Senate File 2330, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 1, line 21, by striking the word "shall"
4 and inserting the following: "may".

By LARSON of Linn

H-8845 FILED APRIL 1, 1998

Adopted
4-1-98 (P. 1176)

HOUSE AMENDMENT TO
SENATE FILE 2330

S-5486

- 1 Amend Senate File 2330, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 1, line 21, by striking the word "shall"
4 and inserting the following: "may".
5 2. Page 3, by striking lines 21 through 31 and
6 inserting the following:
7 "b. If the inmate or prisoner has no good conduct
8 time credits to deduct, the order of the court or the
9 disciplinary hearing may deduct up to fifty percent of
10 the average".
11 3. Page 4, by striking lines 3 and 4.
12 4. By renumbering, relettering, or redesignating
13 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

(P. 1101)

Senate Concurred 4-7-98

S-5486 FILED APRIL 2, 1998

McKean
Maddox
Fraise

SSB 2154
Judiciary
Succeeded By
SF/HF 2330

SENATE FILE
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON MCKEAN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the filing of civil litigation by prisoners
2 and providing an effective date.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 610.1, Code 1997, is amended by adding
2 the following new unnumbered paragraph:

3 NEW UNNUMBERED PARAGRAPH. Notwithstanding the provisions
4 of this section, the court shall deny the application and
5 affidavit of an inmate who has had three or more actions
6 dismissed pursuant to section 610A.2. Such inmate shall not
7 be permitted to proceed without prepayment of fees, cost, or
8 security pursuant to this chapter.

9 Sec. 2. Section 610A.1, subsection 1, Code 1997, is
10 amended by adding the following new paragraphs:

11 NEW PARAGRAPH. e. If the inmate has unsuccessfully
12 prosecuted three or more frivolous actions in the preceding
13 five-year period, the court may stay the proceeding in
14 accordance with section 617.16.

15 NEW PARAGRAPH. f. If the inmate has had three or more
16 actions dismissed pursuant to section 610A.2, the inmate shall
17 not be permitted to file an action pursuant to chapter 610.

18 Sec. 3. Section 610A.1, Code 1997, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 3. Prior to docketing, if feasible, or
21 otherwise as soon as practicable after docketing, of any civil
22 case filed by a petitioner who is an inmate or prisoner, the
23 court shall screen the petition and dismiss on its own motion
24 any action or any portion of an action that the court is
25 satisfied is frivolous or malicious, fails to state a claim
26 upon which relief can be granted, or is otherwise subject to
27 dismissal under section 610A.2.

28 Sec. 4. Section 610A.2, subsections 1 and 2, Code 1997,
29 are amended to read as follows:

30 1. In addition to the penalty provided in section 610.5,
31 if applicable, or any other applicable penalty under the Code,
32 the court in-which-an-affidavit-of-inability-to-pay-has-been
33 filed may dismiss the an action or appeal that is subject to
34 this chapter, in whole or in part, on a finding of either any
35 of the following:

1 a. The allegation of inability to pay asserted in an
2 accompanying affidavit is false.

3 b. The action, claim, defense, or appeal is frivolous or
4 malicious in whole or in part.

5 c. The inmate or prisoner has knowingly presented false
6 testimony or evidence, or has attempted to create or present
7 false testimony or evidence in support of the action, claim,
8 defense, or appeal.

9 d. The actions of the inmate or prisoner in pursuing the
10 action, claim, defense, or appeal constitute an abuse of the
11 discovery process.

12 2. In determining whether an action or appeal is frivolous
13 or malicious, the court may consider ~~whether-the-claim~~ the
14 following:

15 a. Whether the action, claim, defense, or appeal is
16 without substantial justification, or otherwise has no
17 arguable basis in law or fact, including that the action,
18 claim, defense, or appeal fails to state a claim upon which
19 relief could be granted, or the action, claim, defense, or
20 appeal cannot be supported by a reasonable argument for a
21 change in existing law.

22 b. Whether the action, claim, defense, or appeal is
23 substantially similar to a previous action, claim, defense, or
24 appeal, that was determined to be frivolous or malicious,
25 either in that it is brought against the same party or in that
26 the claim arises from the same operative facts as-a-previous
27 claim-which-was-determined-to-be-frivolous-or-malicious.

28 c. Whether the action, claim, defense, or appeal is
29 intended solely or primarily for harassment.

30 d. The fact that evidentiary support for the action,
31 claim, defense, or appeal is unavailable, or is not likely to
32 be discovered after investigation.

33 e. Whether the action, claim, defense, or appeal is
34 asserted with an improper purpose, including but not limited
35 to, causing an unnecessary expansion or delay in proceedings,

1 increasing the cost of proceedings, or harassing an opponent.

2 f. Whether the defendant is immune from providing the
3 relief sought.

4 Sec. 5. Section 610A.3, Code 1997, is amended to read as
5 follows:

6 610A.3 ~~LOSS-OF-GOOD-CONDUCT-TIME~~ PENALTIES.

7 1. If an action or appeal brought by an inmate or prisoner
8 in state or federal court is determined to be malicious or
9 filed solely to harass or if the inmate or prisoner testifies
10 falsely or otherwise presents false evidence or information to
11 the court in such an action dismissed pursuant to section
12 610A.2, or, if brought in federal court, is dismissed under
13 any of the principles enumerated in section 610A.2, the inmate
14 shall lose be subject to the following penalties:

15 a. The loss of some or all of the good conduct time
16 credits acquired by the inmate or prisoner. Previous
17 dismissals under section 610A.2 may be considered in
18 determining the appropriate level of penalty.

19 b. If the inmate or prisoner has not yet acquired good
20 conduct time credits sufficient to meet the penalty, the order
21 of the court or the disciplinary hearing may apply the penalty
22 to credits to be earned in the future.

23 c. If the inmate or prisoner has no good conduct time
24 credits to deduct, or is not reasonably anticipated to earn
25 enough credits to satisfy the application of the penalty, or
26 if loss of good conduct time credits is not reasonably
27 anticipated to have an effect on the inmate or prisoner, the
28 order of the court or of the disciplinary hearing may also, or
29 in the alternative, deduct up to fifty percent of the average
30 balance of the inmate account under section 904.702 or of any
31 prisoner account.

32 2. The court may make an order deducting the credits or
33 the credits may be deducted pursuant to a disciplinary hearing
34 pursuant to chapter 903A at the facility at which the inmate
35 is held.

1 3. Credits deducted under this section cannot be restored
2 for any reason.

3 Sec. 6. EFFECTIVE DATE. This Act, being deemed of
4 immediate importance, takes effect upon enactment.

5 Sec. 7. SEVERABILITY. If this Act, or any portion of this
6 Act, is held to be unconstitutional, the remainder of this Act
7 shall remain in effect to the fullest extent possible.

8 EXPLANATION

9 This bill amends the Code chapter relating to civil
10 lawsuits filed by prisoners and inmates.

11 The bill provides additional grounds for the court to
12 dismiss a complaint, claim, defense, or appeal by an inmate or
13 prisoner, in addition to the current grounds of a false
14 affidavit of inability to pay costs and fees and the filing of
15 a frivolous or malicious action. The court may also dismiss
16 claims if an inmate has knowingly presented or attempted to
17 create false evidence or testimony, or if the actions of the
18 inmate constitute an abuse of the discovery process.

19 The bill provides additional grounds for classifying an
20 action, claim, defense, or appeal as frivolous or malicious.
21 The court may consider whether the claim is without
22 substantial justification, or cannot be supported by a
23 reasonable argument for a change in existing law. The court
24 may consider whether the action is intended solely or
25 primarily for harassment, or whether it is asserted for some
26 improper purpose, including seeking to cause an unnecessary
27 expansion or delay in proceedings. The court may consider
28 whether the defendant is immune from providing the relief
29 requested. And, the court may consider the fact that
30 evidentiary support is unavailable and is unlikely to be
31 discovered after investigation.

32 A prisoner who brings an action that is dismissed under
33 these standards is subject to a loss of some or all good
34 conduct time credits acquired, including credits to be earned
35 in the future. In addition, or in the alternative, a state

1 inmate is subject to a loss of up to fifty percent of the
2 balance in the inmate's account. Credits deducted under these
3 provisions shall not be restored for any reason.

4 A prisoner who brings three or more frivolous actions
5 within five years is subject to the stay of proceedings,
6 pending prepayment or guarantee of costs applicable to all
7 civil litigants under Code section 617.16. In addition, a
8 prisoner who has had three actions dismissed will not be
9 permitted to file in forma pauperis, pursuant to Code chapter
10 610. This provision is modeled after a similar provision
11 added to federal law in 1996.

12 The bill also requires courts to screen prisoner petitions
13 either before docketing, or very soon thereafter, and to
14 dismiss any claims or actions according to the standards in
15 Code section 610A.2.

16 The bill has an immediate effective date and a severability
17 clause.

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SENATE FILE 2330

AN ACT

RELATING TO THE FILING OF CIVIL LITIGATION BY PRISONERS AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 610.1, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Notwithstanding the provisions of this section, the court shall deny the application and affidavit of an inmate who has had three or more actions dismissed pursuant to section 610A.2. Such inmate shall not be permitted to proceed without prepayment of fees, cost, or security pursuant to this chapter.

Sec. 2. Section 610A.1, subsection 1, Code 1997, is amended by adding the following new paragraphs:

NEW PARAGRAPH. e. If the inmate has unsuccessfully prosecuted three or more frivolous actions in the preceding five-year period, the court may stay the proceeding in accordance with section 617.16.

NEW PARAGRAPH. f. If the inmate has had three or more actions dismissed pursuant to section 610A.2, the inmate shall not be permitted to file an action pursuant to chapter 610.

Sec. 3. Section 610A.1, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3. In any civil case filed by a petitioner who is an inmate or prisoner, the respondent may review the petition and, if applicable, file a pre-answer motion asserting, in addition to any other defense that must be asserted in such a motion under the rules of civil procedure, that the action or any portion of the action should be dismissed pursuant to this chapter because the action or any portion of the action is frivolous or malicious, fails to

state a claim upon which relief can be granted, or is otherwise subject to dismissal under section 610A.2.

Sec. 4. Section 610A.2, subsections 1 and 2, Code 1997, are amended to read as follows:

1. In addition to the penalty provided in section 610.5, if applicable, or any other applicable penalty under the Code, the court ~~in which an affidavit of inability to pay has been filed~~ may dismiss the an action or appeal that is subject to this chapter, in whole or in part, on a finding of either any of the following:

- a. The allegation of inability to pay asserted in an accompanying affidavit is false.
- b. The action, claim, defense, or appeal is frivolous or malicious in whole or in part.
- c. The inmate or prisoner has knowingly presented false testimony or evidence, or has attempted to create or present false testimony or evidence in support of the action, claim, defense, or appeal.
- d. The actions of the inmate or prisoner in pursuing the action, claim, defense, or appeal constitute an abuse of the discovery process.

2. In determining whether an action or appeal is frivolous or malicious, the court may consider ~~whether the claim~~ the following:

- a. Whether the action, claim, defense, or appeal is without substantial justification, or otherwise has no arguable basis in law or fact, including that the action, claim, defense, or appeal fails to state a claim upon which relief could be granted, or the action, claim, defense, or appeal cannot be supported by a reasonable argument for a change in existing law.
- b. Whether the action, claim, defense, or appeal is substantially similar to a previous action, claim, defense, or appeal, that was determined to be frivolous or malicious, either in that it is brought against the same party or in that

the claim arises from the same operative facts as a previous claim which was determined to be frivolous or malicious.

c. Whether the action, claim, defense, or appeal is intended solely or primarily for harassment.

d. The fact that evidentiary support for the action, claim, defense, or appeal is unavailable, or is not likely to be discovered after investigation.

e. Whether the action, claim, defense, or appeal is asserted with an improper purpose, including but not limited to, causing an unnecessary expansion or delay in proceedings, increasing the cost of proceedings, or harassing an opponent.

f. Whether the defendant is immune from providing the relief sought.

Sec. 5. Section 610A.3, Code 1997, is amended to read as follows:

610A.3 LOSS-OF-GOOD-CONDUCT-TIME PENALTIES.

1. If an action or appeal brought by an inmate or prisoner in state or federal court is determined to be malicious or filed solely to harass or if the inmate or prisoner testifies falsely or otherwise presents false evidence or information to the court in such an action dismissed pursuant to section 610A.2, or, if brought in federal court, is dismissed under any of the principles enumerated in section 610A.2, the inmate shall ~~lose~~ be subject to the following penalties:

a. The loss of some or all of the good conduct time credits acquired by the inmate or prisoner. Previous dismissals under section 610A.2 may be considered in determining the appropriate level of penalty.

b. If the inmate or prisoner has no good conduct time credits to deduct, the order of the court or the disciplinary hearing may deduct up to fifty percent of the average balance of the inmate account under section 904.702 or of any prisoner account.

2. The court may make an order deducting the credits or the credits may be deducted pursuant to a disciplinary hearing

pursuant to chapter 903A at the facility at which the inmate is held.

Sec. 6. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Sec. 7. SEVERABILITY. If this Act, or any portion of this Act, is held to be unconstitutional, the remainder of this Act shall remain in effect to the fullest extent possible.

MARY E. KRAMER
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2330, Seventy-seventh General Assembly.

MARY PAT GUNDERSON
Secretary of the Senate

Approved April 23, 1998

TERRY E. BRANSTAD
Governor