

MAR 7 1995

JUDICIARY

*Reprinted*

HOUSE FILE 246  
BY GRUBBS

Passed House, <sup>(P.1200)</sup> Date 4/4/95 Passed Senate, Date 4/11/95 (P.1133)  
Vote: Ayes 93 Nays 3 Vote: Ayes 49 Nays 0  
Approved May 4, 1995

A BILL FOR

1 An Act relating to civil litigation by inmates and prisoners and  
2 deductions from inmate accounts for certain expenses,  
3 including costs of litigation by inmates.

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

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

**HF 246**

1 Section 1. NEW SECTION. 610A.1 ACTIONS OR APPEALS  
2 BROUGHT BY INMATES.

3 1. Notwithstanding section 610.1, if the person bringing a  
4 civil action or appeal is an inmate of an institution or  
5 facility under the control of the department of corrections or  
6 a prisoner of a county jail or detention facility, the inmate  
7 or prisoner shall pay in full all fees and costs associated  
8 with the action or appeal.

9 a. Upon filing of the action or appeal, the court shall  
10 order the inmate or prisoner to pay a minimum of twenty per-  
11 cent of the required filing fee before the court will take any  
12 further action on the inmate's or prisoner's action or appeal  
13 and shall also order the inmate or prisoner to make monthly  
14 payments of ten percent of all outstanding fees and costs  
15 associated with the inmate's or prisoner's action or appeal.

16 b. If the inmate has an inmate account under section  
17 904.702, the department of corrections shall withdraw moneys  
18 maintained in the account for the payment of fees and costs  
19 associated with the inmate's action or appeal in accordance  
20 with the court's order until the required fees and costs are  
21 paid in full. The inmate shall file a certified copy of the  
22 inmate's account balance with the court at the time the action  
23 or appeal is filed.

24 c. An inmate may authorize the department of corrections  
25 to make or the inmate may make an initial or subsequent  
26 payment beyond that requirement by this section.

27 d. The court may dismiss any civil action or appeal in  
28 which the inmate or prisoner has previously failed to pay fees  
29 and costs in accordance with this section.

30 2. The court may make the authorization provided for in  
31 section 610.1 if it finds that the inmate does not have suf-  
32 ficient moneys in the inmate's account or sufficient moneys  
33 flowing into the account to make the payments required in this  
34 section or, in the case of a prisoner of a county jail or  
35 detention facility, that the prisoner otherwise meets the

1 requirements of section 610.1.

2 Sec. 2. NEW SECTION. 610A.2 DISMISSAL OF ACTION OR  
3 APPEAL.

4 1. In addition to the penalty provided in section 610.5,  
5 the court in which an affidavit of inability to pay has been  
6 filed may dismiss the action or appeal in whole or in part on  
7 a finding of either of the following:

8 a. The allegation of inability to pay is false.

9 b. The action or appeal is frivolous or malicious in whole  
10 or in part.

11 2. In determining whether an action or appeal is frivolous  
12 or malicious, the court may consider whether the claim has no  
13 arguable basis in law or fact or the claim is substantially  
14 similar to a previous claim, either in that it is brought  
15 against the same party or in that the claim arises from the  
16 same operative facts as a previous claim.

17 3. In making the determination under subsection 1, the  
18 court may hold a hearing before or after service of process on  
19 its own motion or on the motion of a party. The hearing may  
20 be held by telephone or video conference on the motion of the  
21 court or of a party.

22 4. The court may dismiss the entire action or appeal or a  
23 portion of the action or appeal before or after service of  
24 process. If a portion of the action or appeal is dismissed,  
25 the court shall also designate the issues and defendants on  
26 which the action or appeal is to proceed without paying fees  
27 and costs. This order is not subject to interlocutory appeal.

28 Sec. 3. NEW SECTION. 610A.3 LOSS OF GOOD CONDUCT TIME.

29 If an action or appeal brought by an inmate or prisoner in  
30 state or federal court is determined to be malicious or filed  
31 solely to harass or if the inmate or prisoner testifies  
32 falsely or otherwise presents false evidence or information to  
33 the court in such an action, the inmate shall lose some or all  
34 of the good conduct time credits acquired by the inmate or  
35 prisoner. The court may make an order deducting the credits

1 or the credits may be deducted pursuant to a disciplinary  
2 hearing at the facility at which the inmate is held.

3 Sec. 4. NEW SECTION. 610A.4 COST SETOFF.

4 The state or a county shall have the right to set off the  
5 cost of incarceration of an inmate or prisoner at any time and  
6 without prior notice against any claim made by or monetary  
7 obligation owed to an inmate or prisoner for whom the cost of  
8 incarceration can be calculated.

9 Sec. 5. Section 904.702, Code 1995, is amended to read as  
10 follows:

11 904.702 ~~DEDUCTION-TO-PAY-COURT-COSTS,-INDUSTRIES-PROGRAM~~  
12 ~~COSTS,-INCARCERATION-COSTS,-OR-DEPENDENTS----DEPOSITS---~~  
13 SAVINGS-FUND DEDUCTIONS FROM INMATE ACCOUNTS.

14 If allowances are paid pursuant to section 904.701, the  
15 director ~~may deduct an amount established by the inmate's~~  
16 ~~restitution plan of payment or an amount sufficient to pay all~~  
17 ~~or part of the court costs taxed as a result of the inmate's~~  
18 commitment shall establish an inmate account, for deposit of  
19 those allowances and for deposit of moneys sent to the inmate  
20 from a source other than the department of corrections. The  
21 ~~amount deducted shall be forwarded to the clerk of the~~  
22 ~~district court or proper official.~~ The director may deduct an  
23 amount, not to exceed ten percent of the amount of the  
24 allowance, unless the inmate requests a larger amount, to be  
25 deposited into the inmate savings fund ~~established in as~~  
26 required under section 904.508, subsection 2. However, ~~if the~~  
27 ~~inmate's deposit in the inmate savings fund is sufficient to~~  
28 ~~pay the amount due the inmate upon discharge, parole, or~~  
29 ~~placement on work release pursuant to section 906.9, and the~~  
30 ~~inmate has voluntarily withdrawn from the savings fund, the~~  
31 ~~director shall not make further deposits from the inmate's~~  
32 ~~allowances into the savings fund unless the inmate chooses to~~  
33 participate in the savings fund. The director shall deduct  
34 from the inmate account an amount established by the inmate's  
35 restitution plan of payment. The director shall also deduct

1 from any remaining account balance an amount sufficient to pay  
2 all or part of any judgment against the inmate, including but  
3 not limited to judgments for taxes and child support, and  
4 court costs and fees assessed either as a result of the  
5 inmate's confinement or amounts required to be paid under  
6 section 610A.1. Written notice of the amount of the deduction  
7 shall be given to the inmate, who shall have five days after  
8 receipt of the notice to submit in writing any and all  
9 objections to the deduction to the director, who shall  
10 consider the objections prior to transmitting the deducted  
11 amount to the clerk of the district court. The director need  
12 give only one notice for each action or appeal under section  
13 610A.1 for which periodic deductions are to be made. The  
14 director shall next deduct from any remaining account balance  
15 an amount sufficient to pay all or part of any costs assessed  
16 against the inmate for misconduct or damage to the property of  
17 others. The director may deduct and disburse an amount  
18 sufficient for industries' programs to qualify under the  
19 eligibility requirements established in the Justice Assistance  
20 Act of 1984, Pub. L. No. 98-473, including an amount to pay  
21 all or part of the cost of the inmate's incarceration. The  
22 director may pay all or any part of remaining allowances paid  
23 pursuant to section 904.701 directly to a dependent of the  
24 inmate, or may deposit the allowance to the account of the  
25 inmate, or may deposit a portion and allow the inmate a  
26 portion for the inmate's personal use.

27 The director, the institutional division, and the depart-  
28 ment shall not be liable to any person for any damages caused  
29 by the withdrawal or failure to withdraw money or the payment  
30 or failure to make any payment under this section.

31

## EXPLANATION

32 This bill provides that an inmate or prisoner of an Iowa  
33 department of corrections facility or of a county jail or de-  
34 tention facility is required to pay 20 percent of the filing  
35 fee prior to the court taking any action on the civil action

1 or appeal filed by the inmate or prisoner. The bill also  
2 provides that the inmate or prisoner is to make monthly pay-  
3 ments of at least 10 percent of the outstanding fees and costs  
4 associated with the action or appeal. In the case of an  
5 inmate of a department of corrections facility who has an  
6 inmate account, the department of corrections shall withdraw  
7 the necessary sums for payment of the fees and costs.

8 The inmate or prisoner may still qualify for deferral of  
9 costs under Iowa's in forma pauperis statute (chapter 610) if  
10 the inmate has insufficient funds in or income going into the  
11 inmate's account or the prisoner otherwise meets the  
12 requirements of chapter 610 in the case of a prisoner at a  
13 county jail or detention facility.

14 The bill also provides that an action or appeal by an in-  
15 mate or prisoner may be dismissed by the court if the court  
16 finds that the inmate or prisoner falsely claims the inability  
17 to pay or the action or appeal is frivolous or malicious in  
18 whole or in part. A finding that an action is malicious or  
19 filed solely to harass or in which the inmate or prisoner  
20 testifies or presents false information shall lose some or all  
21 of the inmate's good conduct time earned.

22 Also, the bill provides that the state or a county shall  
23 have the right of setoff against any monetary obligation owed  
24 an inmate or prisoner for whom the cost of incarceration can  
25 be calculated.

26 The bill also amends section 904.702 to provide that an in-  
27 mate account shall be established if the inmate is entitled to  
28 allowances from prison work. The account may also receive  
29 moneys from sources outside the department of corrections.  
30 The bill also provides that the following amounts shall be  
31 deducted from the inmate's account as necessary:

32 1. Ten percent of allowances for deposit in an inmate  
33 savings fund.

34 2. An amount established by the inmate's restitution plan  
35 of payment.

1       3. An amount sufficient to pay all or part of any  
2 judgments against the inmate, costs and fees assessed as a  
3 result of the inmate's confinement, and litigation expenses.

4       4. An amount sufficient to pay all or a part of any costs  
5 assessed against the inmate for misconduct or damage to the  
6 property of others.

7       The bill further provides that the director shall provide  
8 the inmate with notice of any deductions against the inmate,  
9 although only one notice need be given for each action or  
10 appeal. The inmate has five days under the bill to object to  
11 the deductions.

12       In addition, the bill provides that the director, the  
13 institutional division, and the department of corrections are  
14 subject to liability for damages to any person as a result of  
15 the withdrawal of funds or the failure to withdraw funds from  
16 an inmate's account.

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

H-3707

1 Amend House File 246 as follows:

- 2 1. Page 1, line 3, by inserting after the figure  
3 "610.1" the following: "or 822.5".  
4 2. Page 1, line 6, by striking the word "county"  
5 and inserting the following: "municipal".  
6 3. Page 1, line 34, by striking the word "county"  
7 and inserting the following: "municipal".  
8 4. Page 3, line 2, by inserting after the word  
9 "hearing" the following: "pursuant to chapter 903A".  
10 5. Page 3, line 4, by striking the word "county"  
11 and inserting the following: "municipality".  
12 6. Page 3, lines 5 and 6, by striking the words  
13 "and without prior notice" and inserting the  
14 following: ", following notice and hearing,".  
15 7. Page 3, by inserting after line 8 the  
16 following:

17 "Sec. \_\_\_\_ . Section 903A.3, subsection 1, Code  
18 1995, is amended to read as follows:

- 19 1. Upon finding that an inmate has violated an  
20 institutional rule, or has had an action or appeal  
21 dismissed under section 610A.2, the independent  
22 administrative law judge may order forfeiture of any  
23 or all good conduct time earned and not forfeited up  
24 to the date of the violation by the inmate and may  
25 order forfeiture of any or all good conduct time  
26 earned and not forfeited up to the date the action or  
27 appeal is dismissed, unless the court entered such an  
28 order under section 610A.3. The independent  
29 administrative law judge has discretion within the  
30 guidelines established pursuant to section 903A.4, to  
31 determine the amount of time that should be forfeited  
32 based upon the severity of the violation. Prior  
33 violations by the inmate may be considered by the  
34 administrative law judge in the decision."

By GRUBBS of Scott  
KREIMAN of Davis

H-3707 FILED APRIL 3, 1995

*Adopted*  
*4-4-95*  
*(P.1200)*



S-4/11/95 Motion R/c Hammond  
(p. 1147) Nusak  
S-4/19/95 Motion R/c by Hammond  
withdrawn

HOUSE FILE 246  
BY GRUBBS

(As Amended and Passed by the House April 4, 1995)

Re-Passed House, Date 4/20/95 (1766) Passed Senate, Date 4/11/95 (p. 1133)  
Vote: Ayes 97 Nays 1 Vote: Ayes 49 Nays 0  
Approved May 4, 1995

**A BILL FOR**

1 An Act relating to civil litigation by inmates and prisoners and  
2 deductions from inmate accounts for certain expenses,  
3 including costs of litigation by inmates.

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

House Amendments \_\_\_\_\_

HOUSE FILE 246

S-3381

1 Amend House File 246 as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 2, line 16, by inserting after the word  
4 "claim" the following: "which was determined to be  
5 frivolous or malicious".

By TOM VILSACK

S-3381 FILED APRIL 10, 1995  
Adopted 4/11/95 (p. 1133)

1 Section 1. NEW SECTION. 610A.1 ACTIONS OR APPEALS  
2 BROUGHT BY INMATES.

3 1. Notwithstanding section 610.1 or 822.5, if the person  
4 bringing a civil action or appeal is an inmate of an  
5 institution or facility under the control of the department of  
6 corrections or a prisoner of a municipal jail or detention  
7 facility, the inmate or prisoner shall pay in full all fees  
8 and costs associated with the action or appeal.

9 a. Upon filing of the action or appeal, the court shall  
10 order the inmate or prisoner to pay a minimum of twenty per-  
11 cent of the required filing fee before the court will take any  
12 further action on the inmate's or prisoner's action or appeal  
13 and shall also order the inmate or prisoner to make monthly  
14 payments of ten percent of all outstanding fees and costs  
15 associated with the inmate's or prisoner's action or appeal.

16 b. If the inmate has an inmate account under section  
17 904.702, the department of corrections shall withdraw moneys  
18 maintained in the account for the payment of fees and costs  
19 associated with the inmate's action or appeal in accordance  
20 with the court's order until the required fees and costs are  
21 paid in full. The inmate shall file a certified copy of the  
22 inmate's account balance with the court at the time the action  
23 or appeal is filed.

24 c. An inmate may authorize the department of corrections  
25 to make or the inmate may make an initial or subsequent  
26 payment beyond that requirement by this section.

27 d. The court may dismiss any civil action or appeal in  
28 which the inmate or prisoner has previously failed to pay fees  
29 and costs in accordance with this section.

30 2. The court may make the authorization provided for in  
31 section 610.1 if it finds that the inmate does not have suf-  
32 ficient moneys in the inmate's account or sufficient moneys  
33 flowing into the account to make the payments required in this  
34 section or, in the case of a prisoner of a municipal jail or  
35 detention facility, that the prisoner otherwise meets the

1 requirements of section 610.1.

2 Sec. 2. NEW SECTION. 610A.2 DISMISSAL OF ACTION OR  
3 APPEAL.

4 1. In addition to the penalty provided in section 610.5,  
5 the court in which an affidavit of inability to pay has been  
6 filed may dismiss the action or appeal in whole or in part on  
7 a finding of either of the following:

8 a. The allegation of inability to pay is false.

9 b. The action or appeal is frivolous or malicious in whole  
10 or in part.

11 2. In determining whether an action or appeal is frivolous  
12 or malicious, the court may consider whether the claim has no  
13 arguable basis in law or fact or the claim is substantially  
14 similar to a previous claim, either in that it is brought  
15 against the same party or in that the claim arises from the  
16 same operative facts as a previous claim.

17 3. In making the determination under subsection 1, the  
18 court may hold a hearing before or after service of process on  
19 its own motion or on the motion of a party. The hearing may  
20 be held by telephone or video conference on the motion of the  
21 court or of a party.

22 4. The court may dismiss the entire action or appeal or a  
23 portion of the action or appeal before or after service of  
24 process. If a portion of the action or appeal is dismissed,  
25 the court shall also designate the issues and defendants on  
26 which the action or appeal is to proceed without paying fees  
27 and costs. This order is not subject to interlocutory appeal.

28 Sec. 3. NEW SECTION. 610A.3 LOSS OF GOOD CONDUCT TIME.

29 If an action or appeal brought by an inmate or prisoner in  
30 state or federal court is determined to be malicious or filed  
31 solely to harass or if the inmate or prisoner testifies  
32 falsely or otherwise presents false evidence or information to  
33 the court in such an action, the inmate shall lose some or all  
34 of the good conduct time credits acquired by the inmate or  
35 prisoner. The court may make an order deducting the credits

1 or the credits may be deducted pursuant to a disciplinary  
2 hearing pursuant to chapter 903A at the facility at which the  
3 inmate is held.

4 Sec. 4. NEW SECTION. 610A.4 COST SETOFF.

5 The state or a municipality shall have the right to set off  
6 the cost of incarceration of an inmate or prisoner at any  
7 time, following notice and hearing, against any claim made by  
8 or monetary obligation owed to an inmate or prisoner for whom  
9 the cost of incarceration can be calculated.

10 Sec. 5. Section 903A.3, subsection 1, Code 1995, is  
11 amended to read as follows:

12 1. Upon finding that an inmate has violated an  
13 institutional rule, or has had an action or appeal dismissed  
14 under section 610A.2, the independent administrative law judge  
15 may order forfeiture of any or all good conduct time earned  
16 and not forfeited up to the date of the violation by the  
17 inmate and may order forfeiture of any or all good conduct  
18 time earned and not forfeited up to the date the action or  
19 appeal is dismissed, unless the court entered such an order  
20 under section 610A.3. The independent administrative law  
21 judge has discretion within the guidelines established  
22 pursuant to section 903A.4, to determine the amount of time  
23 that should be forfeited based upon the severity of the  
24 violation. Prior violations by the inmate may be considered  
25 by the administrative law judge in the decision.

26 Sec. 6. Section 904.702, Code 1995, is amended to read as  
27 follows:

28 904.702 DEDUCTION-TO-PAY-COURT-COSTS,-INDUSTRIES-PROGRAM  
29 COSTS,-INCARCERATION-COSTS,-OR-DEPENDENTS---DEPOSITS---  
30 SAVINGS-FUND DEDUCTIONS FROM INMATE ACCOUNTS.

31 If allowances are paid pursuant to section 904.701, the  
32 ~~director may deduct an amount established by the inmate's~~  
33 ~~restitution plan of payment or an amount sufficient to pay all~~  
34 ~~or part of the court costs taxed as a result of the inmate's~~  
35 commitment shall establish an inmate account, for deposit of

1 those allowances and for deposit of moneys sent to the inmate  
2 from a source other than the department of corrections. The  
3 ~~amount deducted shall be forwarded to the clerk of the~~  
4 ~~district court or proper official.~~ The director may deduct an  
5 amount, not to exceed ten percent of the amount of the  
6 allowance, unless the inmate requests a larger amount, to be  
7 deposited into the inmate savings fund established in as  
8 required under section 904.508, subsection 2. However, ~~if the~~  
9 ~~inmate's deposit in the inmate savings fund is sufficient to~~  
10 ~~pay the amount due the inmate upon discharge, parole, or~~  
11 ~~placement on work release pursuant to section 906.9, and the~~  
12 ~~inmate has voluntarily withdrawn from the savings fund, the~~  
13 ~~director shall not make further deposits from the inmate's~~  
14 ~~allowances into the savings fund unless the inmate chooses to~~  
15 ~~participate in the savings fund.~~ The director shall deduct  
16 from the inmate account an amount established by the inmate's  
17 restitution plan of payment. The director shall also deduct  
18 from any remaining account balance an amount sufficient to pay  
19 all or part of any judgment against the inmate, including but  
20 not limited to judgments for taxes and child support, and  
21 court costs and fees assessed either as a result of the  
22 inmate's confinement or amounts required to be paid under  
23 section 610A.1. Written notice of the amount of the deduction  
24 shall be given to the inmate, who shall have five days after  
25 receipt of the notice to submit in writing any and all  
26 objections to the deduction to the director, who shall  
27 consider the objections prior to transmitting the deducted  
28 amount to the clerk of the district court. The director need  
29 give only one notice for each action or appeal under section  
30 610A.1 for which periodic deductions are to be made. The  
31 director shall next deduct from any remaining account balance  
32 an amount sufficient to pay all or part of any costs assessed  
33 against the inmate for misconduct or damage to the property of  
34 others. The director may deduct and disburse an amount  
35 sufficient for industries' programs to qualify under the

1 eligibility requirements established in the Justice Assistance  
2 Act of 1984, Pub. L. No. 98-473, including an amount to pay  
3 all or part of the cost of the inmate's incarceration. The  
4 director may pay all or any part of remaining allowances paid  
5 pursuant to section 904.701 directly to a dependent of the  
6 inmate, or may deposit the allowance to the account of the  
7 inmate, or may deposit a portion and allow the inmate a  
8 portion for the inmate's personal use.

9 The director, the institutional division, and the depart-  
10 ment shall not be liable to any person for any damages caused  
11 by the withdrawal or failure to withdraw money or the payment  
12 or failure to make any payment under this section.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

SENATE AMENDMENT TO HOUSE FILE 246

H-3990  
1 Amend House File 246 as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 2, line 16, by inserting after the word  
4 "claim" the following: "which was determined to be  
5 frivolous or malicious".

RECEIVED FROM THE SENATE  
H-3990 FILED APRIL 20, 1995  
*House concurred (p. 1766)*

HOUSE FILE 246

AN ACT

RELATING TO CIVIL LITIGATION BY INMATES AND PRISONERS AND  
DEDUCTIONS FROM INMATE ACCOUNTS FOR CERTAIN EXPENSES, IN-  
CLUDING COSTS OF LITIGATION BY INMATES.

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

Section 1. NEW SECTION. 610A.1 ACTIONS OR APPEALS  
BROUGHT BY INMATES.

1. Notwithstanding section 610.1 or 822.5, if the person bringing a civil action or appeal is an inmate of an institution or facility under the control of the department of corrections or a prisoner of a municipal jail or detention facility, the inmate or prisoner shall pay in full all fees and costs associated with the action or appeal.

a. Upon filing of the action or appeal, the court shall order the inmate or prisoner to pay a minimum of twenty percent of the required filing fee before the court will take any

further action on the inmate's or prisoner's action or appeal and shall also order the inmate or prisoner to make monthly payments of ten percent of all outstanding fees and costs associated with the inmate's or prisoner's action or appeal.

b. If the inmate has an inmate account under section 904.702, the department of corrections shall withdraw moneys maintained in the account for the payment of fees and costs associated with the inmate's action or appeal in accordance with the court's order until the required fees and costs are paid in full. The inmate shall file a certified copy of the inmate's account balance with the court at the time the action or appeal is filed.

c. An inmate may authorize the department of corrections to make or the inmate may make an initial or subsequent payment beyond that requirement by this section.

d. The court may dismiss any civil action or appeal in which the inmate or prisoner has previously failed to pay fees and costs in accordance with this section.

2. The court may make the authorization provided for in section 610.1 if it finds that the inmate does not have sufficient moneys in the inmate's account or sufficient moneys flowing into the account to make the payments required in this section or, in the case of a prisoner of a municipal jail or detention facility, that the prisoner otherwise meets the requirements of section 610.1.

Sec. 2. NEW SECTION. 610A.2 DISMISSAL OF ACTION OR APPEAL.

1. In addition to the penalty provided in section 610.5, the court in which an affidavit of inability to pay has been filed may dismiss the action or appeal in whole or in part on a finding of either of the following:

a. The allegation of inability to pay is false.

b. The action or appeal is frivolous or malicious in whole or in part.

2. In determining whether an action or appeal is frivolous or malicious, the court may consider whether the claim has no arguable basis in law or fact or the claim is substantially similar to a previous claim, 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.

3. In making the determination under subsection 1, the court may hold a hearing before or after service of process on its own motion or on the motion of a party. The hearing may be held by telephone or video conference on the motion of the court or of a party.

4. The court may dismiss the entire action or appeal or a portion of the action or appeal before or after service of process. If a portion of the action or appeal is dismissed, the court shall also designate the issues and defendants on which the action or appeal is to proceed without paying fees and costs. This order is not subject to interlocutory appeal.

Sec. 3. NEW SECTION. 610A.3 LOSS OF GOOD CONDUCT TIME.

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, the inmate shall lose some or all of the good conduct time credits acquired by the inmate or prisoner. 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. 4. NEW SECTION. 610A.4 COST SETOFF.

The state or a municipality shall have the right to set off the cost of incarceration of an inmate or prisoner at any time, following notice and hearing, against any claim made by or monetary obligation owed to an inmate or prisoner for whom the cost of incarceration can be calculated.

Sec. 5. Section 903A.3, subsection 1, Code 1995, is amended to read as follows:

1. Upon finding that an inmate has violated an institutional rule, or has had an action or appeal dismissed under section 610A.2, the independent administrative law judge may order forfeiture of any or all good conduct time earned and not forfeited up to the date of the violation by the inmate and may order forfeiture of any or all good conduct time earned and not forfeited up to the date the action or appeal is dismissed, unless the court entered such an order under section 610A.3. The independent administrative law judge has discretion within the guidelines established pursuant to section 903A.4, to determine the amount of time that should be forfeited based upon the severity of the violation. Prior violations by the inmate may be considered by the administrative law judge in the decision.

Sec. 6. Section 904.702, Code 1995, is amended to read as follows:

904.702 ~~DEDUCTION-TO-PAY-COURT-COSTS,-INDUSTRIES-PROGRAM COSTS,-INCARCERATION-COSTS,-OR-DEPENDENTS---DEPOSITS---~~ SAVINGS-FUND DEDUCTIONS FROM INMATE ACCOUNTS.

If allowances are paid pursuant to section 904.701, the director ~~may deduct an amount established by the inmate's restitution plan of payment or an amount sufficient to pay all or part of the court costs taxed as a result of the inmate's commitment~~ shall establish an inmate account, for deposit of those allowances and for deposit of moneys sent to the inmate from a source other than the department of corrections. ~~The amount deducted shall be forwarded to the clerk of the district court or proper official.~~ The director may deduct an amount, not to exceed ten percent of the amount of the allowance, unless the inmate requests a larger amount, to be deposited into the inmate savings fund established in as required under section 904.508, subsection 2. ~~However, if the inmate's deposit in the inmate savings fund is sufficient to~~



~~pay the amount due the inmate upon discharge, parole, or placement on work release pursuant to section 906.97 and the inmate has voluntarily withdrawn from the savings fund, the director shall not make further deposits from the inmate's allowances into the savings fund unless the inmate chooses to participate in the savings fund.~~ The director shall deduct from the inmate account an amount established by the inmate's restitution plan of payment. The director shall also deduct from any remaining account balance an amount sufficient to pay all or part of any judgment against the inmate, including but not limited to judgments for taxes and child support, and court costs and fees assessed either as a result of the inmate's confinement or amounts required to be paid under section 610A.1. Written notice of the amount of the deduction shall be given to the inmate, who shall have five days after receipt of the notice to submit in writing any and all objections to the deduction to the director, who shall consider the objections prior to transmitting the deducted amount to the clerk of the district court. The director need give only one notice for each action or appeal under section 610A.1 for which periodic deductions are to be made. The director shall next deduct from any remaining account balance an amount sufficient to pay all or part of any costs assessed against the inmate for misconduct or damage to the property of others. The director may deduct and disburse an amount sufficient for industries' programs to qualify under the eligibility requirements established in the Justice Assistance Act of 1984, Pub. L. No. 98-473, including an amount to pay all or part of the cost of the inmate's incarceration. The director may pay all or any part of remaining allowances paid pursuant to section 904.701 directly to a dependent of the inmate, or may deposit the allowance to the account of the inmate, or may deposit a portion and allow the inmate a portion for the inmate's personal use.

The director, the institutional division, and the department shall not be liable to any person for any damages caused by the withdrawal or failure to withdraw money or the payment or failure to make any payment under this section.

---

RON J. CORBETT  
Speaker of the House

---

LEONARD L. BOSWELL  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 246, Seventy-sixth General Assembly.

Approved  , 1995

---

ELIZABETH ISAACSON  
Chief Clerk of the House

---

TERRY E. BRANSTAD  
Governor