

Senate Study Bill 2154

Bill Text

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1 1 Section 1. Section [610.1](#), Code 1997, is amended by adding
1 2 the following new unnumbered paragraph:

1 3 NEW UNNUMBERED PARAGRAPH. Notwithstanding the provisions
1 4 of this section, the court shall deny the application and
1 5 affidavit of an inmate who has had three or more actions
1 6 dismissed pursuant to section 610A.2. Such inmate shall not
1 7 be permitted to proceed without prepayment of fees, cost, or
1 8 security pursuant to this chapter.

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

1 11 NEW PARAGRAPH. e. If the inmate has unsuccessfully
1 12 prosecuted three or more frivolous actions in the preceding
1 13 five-year period, the court may stay the proceeding in
1 14 accordance with section 617.16.

1 15 NEW PARAGRAPH. f. If the inmate has had three or more
1 16 actions dismissed pursuant to section 610A.2, the inmate shall
1 17 not be permitted to file an action pursuant to chapter 610.

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

1 20 NEW SUBSECTION. 3. Prior to docketing, if feasible, or
1 21 otherwise as soon as practicable after docketing, of any civil
1 22 case filed by a petitioner who is an inmate or prisoner, the
1 23 court shall screen the petition and dismiss on its own motion
1 24 any action or any portion of an action that the court is
1 25 satisfied is frivolous or malicious, fails to state a claim
1 26 upon which relief can be granted, or is otherwise subject to
1 27 dismissal under section 610A.2.

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

1 30 1. In addition to the penalty provided in section 610.5,
1 31 if applicable, or any other applicable penalty under the Code,
1 32 the court

~~in which an affidavit of inability to pay has been~~

1 33

~~filed~~

~~may dismiss~~

~~the~~

~~an action or appeal that is subject to~~

1 34 this chapter, in whole or in part, on a finding of

~~either~~

~~any~~

1 35 of the following:

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

2 3 b. The action, claim, defense, or appeal is frivolous or
2 4 malicious in whole or in part.

2 5 c. The inmate or prisoner has knowingly presented false
2 6 testimony or evidence, or has attempted to create or present
2 7 false testimony or evidence in support of the action, claim,
2 8 defense, or appeal.

2 9 d. The actions of the inmate or prisoner in pursuing the

2 10 action, claim, defense, or appeal constitute an abuse of the
2 11 discovery process.
2 12 2. In determining whether an action or appeal is frivolous
2 13 or malicious, the court may consider

~~whether the claim~~

~~the~~

2 14 following:

2 15 a. Whether the action, claim, defense, or appeal is
2 16 without substantial justification, or otherwise has no
2 17 arguable basis in law or fact, including that the action,
2 18 claim, defense, or appeal fails to state a claim upon which
2 19 relief could be granted, or the action, claim, defense, or
2 20 appeal cannot be supported by a reasonable argument for a
2 21 change in existing law.

2 22 b. Whether the action, claim, defense, or appeal is
2 23 substantially similar to a previous action, claim, defense, or
2 24 appeal, that was determined to be frivolous or malicious,
2 25 either in that it is brought against the same party or in that
2 26 the claim arises from the same operative facts

~~as a previous~~

~~-~~

2 27

~~claim which was determined to be frivolous or malicious~~

~~-~~

2 28 c. Whether the action, claim, defense, or appeal is
2 29 intended solely or primarily for harassment.

2 30 d. The fact that evidentiary support for the action,
2 31 claim, defense, or appeal is unavailable, or is not likely to
2 32 be discovered after investigation.

2 33 e. Whether the action, claim, defense, or appeal is
2 34 asserted with an improper purpose, including but not limited
2 35 to, causing an unnecessary expansion or delay in proceedings,
3 1 increasing the cost of proceedings, or harassing an opponent.

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

3 4 Sec. 5. Section [610A.3](#), Code 1997, is amended to read as
3 5 follows:

3 6 610A.3

~~LOSS OF GOOD CONDUCT TIME~~

~~PENALTIES.~~

3 7 1. If an action or appeal brought by an inmate or prisoner
3 8 in state

~~or federal~~

~~court is~~

~~determined to be malicious or~~

~~-~~

3 9

~~filed solely to harass or if the inmate or prisoner testifies~~

~~-~~

3 10

~~falsely or otherwise presents false evidence or information to~~

~~-~~

3 11

~~the court in such an action~~

~~dismissed pursuant to section~~

3 12 610A.2, or, if brought in federal court, is dismissed under

3 13 any of the principles enumerated in section 610A.2, the inmate

3 14 shall

~~lose~~

- be subject to the following penalties:

3 15 a. The loss of some or all of the good conduct time
3 16 credits acquired by the inmate or prisoner. Previous
3 17 dismissals under section 610A.2 may be considered in
3 18 determining the appropriate level of penalty.

3 19 b. If the inmate or prisoner has not yet acquired good
3 20 conduct time credits sufficient to meet the penalty, the order
3 21 of the court or the disciplinary hearing may apply the penalty
3 22 to credits to be earned in the future.

3 23 c. If the inmate or prisoner has no good conduct time
3 24 credits to deduct, or is not reasonably anticipated to earn
3 25 enough credits to satisfy the application of the penalty, or
3 26 if loss of good conduct time credits is not reasonably
3 27 anticipated to have an effect on the inmate or prisoner, the
3 28 order of the court or of the disciplinary hearing may also, or
3 29 in the alternative, deduct up to fifty percent of the average
3 30 balance of the inmate account under section 904.702 or of any
3 31 prisoner account.

3 32 2. The court may make an order deducting the credits or
3 33 the credits may be deducted pursuant to a disciplinary hearing
3 34 pursuant to chapter 903A at the facility at which the inmate
3 35 is held.

4 1 3. Credits deducted under this section cannot be restored
4 2 for any reason.

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

4 5 Sec. 7. SEVERABILITY. If this Act, or any portion of this
4 6 Act, is held to be unconstitutional, the remainder of this Act
4 7 shall remain in effect to the fullest extent possible.

4 8 EXPLANATION

4 9 This bill amends the Code chapter relating to civil
4 10 lawsuits filed by prisoners and inmates.

4 11 The bill provides additional grounds for the court to
4 12 dismiss a complaint, claim, defense, or appeal by an inmate or
4 13 prisoner, in addition to the current grounds of a false
4 14 affidavit of inability to pay costs and fees and the filing of
4 15 a frivolous or malicious action. The court may also dismiss
4 16 claims if an inmate has knowingly presented or attempted to
4 17 create false evidence or testimony, or if the actions of the
4 18 inmate constitute an abuse of the discovery process.

4 19 The bill provides additional grounds for classifying an
4 20 action, claim, defense, or appeal as frivolous or malicious.
4 21 The court may consider whether the claim is without
4 22 substantial justification, or cannot be supported by a
4 23 reasonable argument for a change in existing law. The court
4 24 may consider whether the action is intended solely or
4 25 primarily for harassment, or whether it is asserted for some
4 26 improper purpose, including seeking to cause an unnecessary
4 27 expansion or delay in proceedings. The court may consider
4 28 whether the defendant is immune from providing the relief
4 29 requested. And, the court may consider the fact that
4 30 evidentiary support is unavailable and is unlikely to be
4 31 discovered after investigation.

4 32 A prisoner who brings an action that is dismissed under
4 33 these standards is subject to a loss of some or all good
4 34 conduct time credits acquired, including credits to be earned
4 35 in the future. In addition, or in the alternative, a state
5 1 inmate is subject to a loss of up to fifty percent of the
5 2 balance in the inmate's account. Credits deducted under these
5 3 provisions shall not be restored for any reason.

5 4 A prisoner who brings three or more frivolous actions
5 5 within five years is subject to the stay of proceedings,
5 6 pending prepayment or guarantee of costs applicable to all
5 7 civil litigants under Code section 617.16. In addition, a
5 8 prisoner who has had three actions dismissed will not be

5 9 permitted to file in forma pauperis, pursuant to Code chapter
5 10 610. This provision is modeled after a similar provision
5 11 added to federal law in 1996.

5 12 The bill also requires courts to screen prisoner petitions
5 13 either before docketing, or very soon thereafter, and to
5 14 dismiss any claims or actions according to the standards in
5 15 Code section 610A.2.

5 16 The bill has an immediate effective date and a severability
5 17 clause.

5 18 LSB 3693XC 77

5 19 jls/jl/8