



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB3793

Introduced 2/25/2005, by Rep. Brandon W. Phelps

SYNOPSIS AS INTRODUCED:

New Act

Creates the Inmate Civil Lawsuit Act. Provides that prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the State right of a particular plaintiff or plaintiffs. Provides that the court shall not grant or approve any prospective relief unless the court finds that the relief is narrowly drawn, extends no further than necessary to correct the violation of the State right, and is the least intrusive means necessary to correct the violation of the State right. Provides that the court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief. Provides that the court shall not order any prospective relief that requires or permits a government official to exceed his or her authority under State or local law or otherwise violates State or local law unless State law permits the relief to be ordered, and the relief is necessary to correct the violation of a State right, and no other relief will correct the violation of the State right. Provides that an inmate suit may not assert a claim under State law until the administrative remedies that are available are exhausted. Provides that if an inmate suit is filed in contravention of this provision, the court shall dismiss the suit without prejudice. Effective immediately.

LRB094 03679 RLC 33684 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning inmate suits.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Inmate
5 Civil Lawsuit Act.

6 Section 5. Definitions. In this Act:

7 "Consent decree" means any relief entered by the court that
8 is based in whole or in part upon the consent or acquiescence
9 of the parties but does not include private settlements.

10 "Civil action with respect to prison conditions" or
11 "prisoner suit" means any civil proceeding with respect to the
12 conditions of confinement or the effects of actions by
13 government officials on the lives of persons confined in
14 prison, but does not include post conviction relief or habeas
15 corpus proceedings challenging the fact or duration of
16 confinement in prison.

17 "Expert" means any person appointed by a court to exercise
18 the powers of an expert, regardless of the title or description
19 given by the court.

20 "Fails to state a claim upon which relief can be granted"
21 means the petition does not allege a set of facts in support of
22 a claim which would entitle the petitioner to relief on that
23 claim.

24 "Correctional facility" means any State or local jail,
25 prison, or other correctional facility that incarcerates or
26 detains juveniles or adults accused of, convicted of, sentenced
27 for, or adjudicated delinquent for violations of criminal law.

28 "Inmate" means any person subject to incarceration,
29 detention, or admission to any correctional facility who is
30 accused of, convicted of, sentenced for, or adjudicated
31 delinquent for a violation of criminal law or the terms or
32 conditions of parole, probation, pretrial release, or a

1 diversionary program. Status as an "inmate" is determined as of
2 the time the cause of action arises. Subsequent events,
3 including post trial judicial action or release from custody,
4 shall not affect that status.

5 "Inmate release order" includes any order, including a
6 temporary restraining order or preliminary injunctive relief,
7 that has the purpose or effect of reducing or limiting the
8 inmate population, or that directs the release of inmates from
9 or prohibits the admission of inmates to a correctional
10 facility.

11 "Private settlement agreement" means an agreement entered
12 into among the parties that is not subject to judicial
13 enforcement other than the reinstatement of the civil
14 proceeding that the agreement settled.

15 "Prospective relief" means all relief other than
16 compensatory monetary damages.

17 "Relief" means all relief in any form that may be granted
18 or approved by the court, and includes consent decrees but does
19 not include private settlement agreements.

20 Section 10. Appropriate remedies with respect to
21 correctional facility conditions.

22 (a) Prospective relief in any civil action with respect to
23 prison conditions shall extend no further than necessary to
24 correct the violation of the State right of a particular
25 plaintiff or plaintiffs. The court shall not grant or approve
26 any prospective relief unless the court finds that relief is
27 narrowly drawn, extends no further than necessary to correct
28 the violation of the State right, and is the least intrusive
29 means necessary to correct the violation of the State right.
30 The court shall give substantial weight to any adverse impact
31 on public safety or the operation of a criminal justice system
32 caused by the relief. The court shall not order any prospective
33 relief that requires or permits a government official to exceed
34 his or her authority under State or local law or otherwise
35 violates State or local law unless State law permits the relief

1 to be ordered, and the relief is necessary to correct the
2 violation of a State right, and no other relief will correct
3 the violation of the State right. Nothing in this Section shall
4 be construed to authorize the courts, in exercising their
5 remedial powers, to order the construction of prisons or the
6 raising of taxes, or to repeal or detract from otherwise
7 applicable limitations on the remedial powers of the courts.

8 (b) In any civil action with respect to correctional
9 facility conditions, to the extent otherwise authorized by law,
10 the court may enter a temporary restraining order or an order
11 for preliminary injunctive relief. Preliminary injunctive
12 relief must be narrowly drawn, extend no further than necessary
13 to correct the harm the court finds requires preliminary
14 relief, and be the least intrusive means necessary to correct
15 that harm. The court shall give substantial weight to any
16 adverse impact on public safety or the operation of a criminal
17 justice system caused by the preliminary relief. Preliminary
18 injunctive relief shall automatically expire 90 days after its
19 entry, unless the court makes the findings required under
20 subsection (a) for the entry of prospective relief and makes
21 the order final before the expiration of the 90-day period.

22 (c) In any civil action with respect to prison conditions,
23 no prisoner release order shall be entered unless a court has
24 previously entered an order for less intrusive relief that has
25 failed to remedy the violation of the State right sought to be
26 remedied through the prisoner release order and the defendant
27 has had a reasonable amount of time to comply with the previous
28 court order.

29 (d) Any State or local official or unit of government whose
30 jurisdiction or function includes the appropriation of funds
31 for the construction, operation, or maintenance of
32 correctional facilities, or the prosecution or custody of
33 persons who may be released from, or not admitted to, a
34 correctional facility as a result of an inmate release order
35 shall have standing to oppose the imposition or continuation in
36 effect of the relief and to seek termination of the relief, and

1 shall have the right to intervene in any proceeding relating to
2 the relief.

3 (e)(1) In any civil action with respect to correctional
4 facility conditions in which prospective relief is ordered, the
5 relief shall be terminable upon the motion of any party or
6 intervener 2 years after the date the court granted or approved
7 the prospective relief, or one year after the date the court
8 has entered an order denying termination of prospective relief
9 under this Section, or, in the case of an order issued on or
10 before the effective date of this Act, 2 years after that date.

11 (2) In any civil action with respect to correctional
12 facility conditions, a defendant or intervener shall be
13 entitled to the immediate termination of any prospective relief
14 if the relief was approved or granted in the absence of a
15 finding by the court that the relief was narrowly drawn,
16 extended no further than necessary to correct the violation of
17 the State right, and was the least intrusive means necessary to
18 correct the violation of the State right.

19 (3) Prospective relief shall not terminate if the court
20 makes written findings based on the record that prospective
21 relief remains necessary to correct a current or ongoing
22 violation of the State right and that the prospective relief is
23 narrowly drawn, extends no further than necessary to correct
24 the violation of the State right, and is the least intrusive
25 means to correct the violation.

26 (4) Nothing in this Section prevents any party or
27 intervener from seeking modification or termination before the
28 relief is terminable under this subsection, to the extent that
29 modification or termination would otherwise be legally
30 permissible.

31 (f) In any civil action with respect to correctional
32 facility conditions, the court shall not enter or approve a
33 consent decree unless it complies with the limitations on
34 relief set forth in subsection (a). Nothing in this Section
35 precludes parties from entering into a private settlement
36 agreement that does not comply with the limitations on relief

1 set forth in subsection (a), if the terms of that agreement are
2 not subject to court enforcement other than the reinstatement
3 of the civil proceeding that the agreement settled.

4 (g) The court shall promptly rule on any motion to modify
5 or terminate prospective relief in a civil action with respect
6 to correctional facility conditions. Any prospective relief
7 subject to a pending motion is automatically stayed during the
8 period beginning on the 30th day after the motion is filed, in
9 the case of a motion made under subsection (e), or beginning on
10 the 180th day after the motion is filed, in the case of a
11 motion made under any other law, and ending on the date the
12 court enters a final order ruling on the motion.

13 Section 15. Experts.

14 (a) When otherwise specifically authorized by law, in any
15 inmate suit, the court may appoint an expert who shall be
16 disinterested and objective and will give due regard to the
17 public safety. If the court determines that the appointment of
18 an expert is necessary, the court shall request that the
19 defendant and the plaintiff each submit a list of not more than
20 5 persons to serve as an expert. Each party shall have the
21 opportunity to remove up to 3 persons from the opposing party's
22 list. The court shall select the expert from the persons
23 remaining on the lists after all names have been removed. Any
24 party shall have the right to an interlocutory appeal of the
25 judge's selection of the expert under this Section on the
26 ground of partiality.

27 (b) An expert appointed under this Section may be
28 authorized to conduct hearings and prepare proposed findings of
29 fact on the record and may assist in the development of
30 remedial plans. The expert shall not make any findings or
31 communications ex parte. An expert may be appointed during the
32 remedial phase of a civil action with respect to correctional
33 facility conditions only upon a finding that the remedial phase
34 will be sufficiently complex to warrant the appointment.

35 (c) In any civil action with respect to correctional

1 facility conditions in which an expert is appointed under this
2 Section, the court shall review the appointment of the expert
3 every 6 months to determine whether the services of the expert
4 continue to be required. The expert may be removed at any time.
5 In no event shall the appointment of an expert extend beyond
6 the termination of the relief.

7 (d) Notwithstanding any other law to the contrary, the
8 compensation to be allowed to an expert shall not be greater
9 than the hourly rate established for payment of court-appointed
10 counsel, plus costs reasonably incurred by the expert. The
11 compensation and costs shall be paid with funds available to
12 the court through the county where the court sits.

13 Section 20. Suits by inmates.

14 (a) In this Section:

15 "Administrative remedies" means written policies adopted
16 by governmental entities responsible for the operation of
17 correctional facilities which establish an internal procedure
18 for receiving, addressing, and resolving claims by inmates with
19 respect to the conditions of confinement or the effects of
20 actions by government officials on the lives of persons
21 confined in a correctional facility.

22 "Available" means all administrative remedies adopted by
23 governmental entities, which address claims of the kind
24 asserted by the inmate even if the administrative remedies do
25 not allow the prisoner the particular kind of relief sought.

26 (b) An inmate suit may not assert a claim under State law
27 until the administrative remedies that are available are
28 exhausted. If an inmate suit is filed in contravention of this
29 subsection (b), the court shall dismiss the suit without
30 prejudice.

31 (c) A court shall take judicial notice of administrative
32 remedies adopted by a governmental entity that have been filed
33 with the clerk of the court in the county where the
34 governmental entity is domiciled.

35 (d) The court, on its own motion or on the motion of a

1 party, shall dismiss any inmate suit if the court is satisfied
2 that the action is frivolous, is malicious, fails to state a
3 cause of action, seeks monetary relief from a defendant who is
4 immune from the relief, or fails to state a claim upon which
5 relief can be granted. If the court makes a determination to
6 dismiss the suit based on the content, or lack thereof, of the
7 petition, the court may dismiss the underlying claim without
8 first requiring the exhaustion of administrative remedies. The
9 court, on its own motion, may raise an exception of improper
10 venue and transfer the suit to a court of proper venue or
11 dismiss the suit.

12 (e) Any defendant may waive the right to reply to any civil
13 action brought by a person confined in any correctional
14 facility or to any inmate suit. Notwithstanding any other law
15 or rule of procedure, the waiver does not constitute an
16 admission of the allegations contained in the petition or waive
17 any affirmative defenses available to the defendant. Relief
18 shall not be granted to the plaintiff unless an answer has been
19 filed. The court may require any defendant to answer a petition
20 brought under this Section if it finds that the plaintiff has a
21 reasonable opportunity to prevail on the merits.

22 (f) To the extent practicable, in any action brought with
23 respect to correctional facility conditions pursuant to the
24 provisions of this Section, or any other law, by an inmate
25 confined in any correctional facility, pretrial proceedings in
26 which the inmate's participation is required or permitted shall
27 be conducted by telephone, video conference, or other
28 communications technology without removing the inmate from the
29 facility in which he or she is confined. The courts may rule on
30 exceptions and motions, without holding a contradictory
31 hearing, after providing the parties an opportunity to file
32 supporting and opposing memoranda. Subject to agreement by the
33 State or local entity of government with custody over the
34 inmate, hearings may be conducted at the facility in which the
35 inmate is confined. To the extent practicable, the court shall
36 allow counsel to participate by telephone, video conference, or

1 other telecommunications technology in any hearing held at the
2 facility.

3 (g) An inmate suit may not assert a claim under State law
4 for mental or emotional injury suffered while in custody
5 without a prior showing of physical injury.

6 (h) The exclusive venue for delictual actions for injury or
7 damages shall be the county where the correctional facility is
8 situated to which the inmate was assigned when the cause of
9 action arose. Upon consent of all parties, the court may
10 transfer the suit to a county in which venue would otherwise be
11 proper.

12 (i) The actions of more than one inmate may not be
13 cumulated and an inmate suit filed or prosecuted pro se may not
14 assert a class action. If a suit names more than one plaintiff
15 or asserts a pro se class action, the actions of any plaintiff,
16 other than the first named plaintiff, shall be dismissed
17 without prejudice.

18 Section 25. Attorney's fees.

19 (a) In any inmate suit in which attorney's fees are
20 authorized, the fees shall not be awarded, except to the extent
21 that the fee was directly and reasonably incurred in proving an
22 actual violation of the plaintiff's rights protected by a
23 statute pursuant to which a fee may be awarded, and the amount
24 of the fee is proportionately related to the court-ordered
25 relief for the violation or the fee was directly and reasonably
26 incurred in enforcing the relief ordered for the violation.

27 (b) Whenever a monetary judgment is awarded in an action
28 described in subsection (a), a portion of the judgment, not to
29 exceed 25%, shall be applied to satisfy the amount of
30 attorney's fees awarded against the defendant. If the award of
31 attorney's fees is not greater than 150% of the judgment, the
32 excess shall be paid by the defendant. No award of attorney's
33 fees in an action shall be based on an hourly rate greater than
34 the hourly rate established for payment of court-appointed
35 counsel.

1 (c) Nothing in this Section prohibits an inmate from
2 entering into an agreement to pay an attorney's fee in an
3 amount greater than the amount authorized under this Section,
4 if the fee is paid by the individual rather than by the
5 defendant.

6 Section 30. Proceedings in forma pauperis.

7 (a) (1) An inmate who seeks to bring a civil action or file
8 an appeal or writ application in a civil action without
9 prepayment of fees or security must comply with all
10 requirements for proceeding in forma pauperis and shall submit
11 a certified copy of the trust fund account statement or
12 institutional equivalent for the six-month period immediately
13 preceding the filing of the petition, notice of appeal, or writ
14 application obtained from the appropriate official of each
15 correctional facility at which the inmate is or was confined.

16 (2) If an inmate brings a civil action or files an appeal
17 or writ application in forma pauperis as authorized by
18 paragraph (a) (1), the inmate shall still be required to pay the
19 full amount of a filing fee. The court shall assess and, when
20 funds exist, collect, as a partial payment of any court fees
21 required by law, an initial partial filing fee of 20% of the
22 greater of the average monthly deposits to the inmate's
23 account, or the average monthly balance in the inmate's account
24 for the 6-month period immediately preceding the filing of the
25 petition, notice of appeal, or writ application.

26 (3) If an inmate brings a civil action, files an appeal, or
27 files a writ application in which the inmate is not allowed to
28 proceed as a pauper, the inmate must pay the required costs in
29 advance. If the inmate does not pay the costs in advance, the
30 civil action, appeal, or writ application shall be dismissed
31 without prejudice.

32 (b) (1) After payment of the initial partial filing fee, as
33 required by paragraph (a) (2) of this Section, the inmate shall
34 be required to make monthly payments of 20% of the preceding
35 month's income credited to the inmate's account. The agency

1 having custody of the inmate shall forward payments from the
2 inmate's account to the clerk of the court each time the amount
3 in the account exceeds \$10 until the filing fees are paid. In
4 no event shall the filing fee collected exceed the amount of
5 fees permitted by law.

6 (2) (A) The order granting an inmate's request to proceed in
7 forma pauperis automatically stays all proceedings, including
8 any service of process, until all costs of court or fees due
9 the clerk by the inmate in this matter are paid. During the
10 pendency of the stay the inmate may not take any action to
11 prosecute the suit, including but not limited to filing any
12 pleadings, discovery, or motions other than a motion for
13 voluntary dismissal or a motion to lift the stay because all
14 costs have been paid.

15 (B) If at any time during the pendency of the action
16 additional costs of court or fees due the clerk by the inmate
17 accrue and are unpaid by the inmate, then upon order of the
18 court ex proprio motu or upon motion of the clerk or any other
19 party, the action may be stayed as provided herein until all
20 the additional costs are paid.

21 (C) If the inmate does not pay the full court costs or fees
22 within 3 years from when they are incurred, the suit shall be
23 abandoned and dismissed without prejudice. This provision
24 shall be operative without formal order, but, on the court's
25 own motion or upon ex parte motion of any party, the clerk or
26 other interested person by affidavit which provides that the
27 full court costs and fees have not been paid within 3 years
28 from when they were incurred, the trial court shall enter a
29 formal order of dismissal as of the date of its abandonment.
30 The order shall be served on the plaintiff and the plaintiff
31 shall have 30 days from date of service to move to set aside
32 the dismissal. However, the trial court may direct that a
33 contradictory hearing be held prior to dismissal.

34 (D) The automatic stay does not apply only if the court
35 makes a written finding that:

36 (i) the suit is a proceeding for judicial review;

1 (ii) the suit is a post-conviction relief or habeas
2 corpus proceeding challenging the fact or duration of
3 confinement in a correctional facility; or

4 (iii) the inmate is in imminent danger of serious
5 physical injury, the suit solely seeks injunctive relief to
6 avoid the danger, and relief is available in the suit which
7 will avert the danger.

8 (c) Notwithstanding any filing fee, or any portion thereof,
9 that may have been paid, the court shall dismiss the case at
10 any time if the court determines that the allegation of poverty
11 is untrue, or the action or appeal is frivolous, is malicious,
12 fails to state a cause of action, seeks monetary relief against
13 a defendant who is immune from the relief, or fails to state a
14 claim upon which relief can be granted.

15 (d) If the judgment against an inmate includes the payment
16 of costs, the inmate shall be required to pay the full amount
17 of the costs ordered and in the same manner as is provided for
18 filing fees. In no event shall the costs collected exceed the
19 amount of the costs ordered by the court.

20 (e) In actions to which this Section applies, the
21 provisions of this Section, to the extent of any conflict with
22 those of the Code of Civil Procedure, apply to the payment of
23 filing fees and costs.

24 (f) If an inmate has at least 3 dismissals as described in
25 Section 35 but the inmate does not yet have 3 dismissals that
26 are final under that Section, and, further, if the inmate is
27 disqualified from proceeding as a pauper either in federal
28 court by operation of 28 U.S.C. 1915(g) or in the courts of
29 another state by operation of a similar law of that state, then
30 the court on its own motion may, or on motion of a party shall,
31 stay all proceedings in any other prisoner suit or appeal in
32 which the inmate is proceeding as a pauper until the time as
33 the dismissals become final. This subsection (f) does not apply
34 if the court finds that the inmate is in imminent danger of
35 serious physical injury.

1 Section 35. Multiple claims. In no event shall an inmate
2 bring a civil action or appeal a judgment in a civil action or
3 proceeding in forma pauperis if the inmate has, on 3 or more
4 prior occasions while incarcerated or detained in any facility,
5 brought an action or appeal in a State court that was dismissed
6 on the grounds that it was frivolous, was malicious, failed to
7 state a cause of action, or failed to state a claim upon which
8 relief may be granted, unless the inmate is under imminent
9 danger of serious physical injury.

10 Section 40. Judicial screening and service of process.

11 (a) The court shall review, before docketing if feasible
12 or, in any event, before service on the defendants, a petition
13 in a civil action in which an inmate seeks redress from a
14 governmental entity or officer or employee of a governmental
15 entity. On review, the court shall identify cognizable claims
16 or dismiss the petition, or any portion of the petition, if the
17 petition is frivolous, is malicious, fails to state a cause of
18 action, seeks monetary relief from a defendant who is immune
19 from the relief, or fails to state a claim upon which relief
20 can be granted.

21 (b) A court shall not authorize or permit service of an
22 inmate suit until compliance with both of the following:

23 (1) the screening required in subsection (a) of this
24 Section has been completed.

25 (2) the provisions of Section 30 have been satisfied,
26 if the plaintiff is proceeding in forma pauperis.

27 (c) The clerk shall not have an inmate suit served until
28 specifically ordered to do so by the court as provided in
29 subsection (b) of this Section, and then the suit shall be
30 served only upon those defendants specifically ordered by the
31 court to be served.

32 Section 45. Payment of damage award in satisfaction of
33 pending restitution orders. Any damages awarded to an inmate in
34 connection with a civil action brought against any correctional

1 facility or against any official or agent of the correctional
2 facility shall be paid directly to satisfy any outstanding
3 restitution orders pending against the inmate. The remainder of
4 any such award after full payment of all pending restitution
5 orders shall be forwarded to the inmate. Prior to payment of
6 any damages awarded under this Act, reasonable efforts shall be
7 made to notify the victims of the crime for which the inmate
8 was convicted and incarcerated concerning the pending payment
9 of any such damages.

10 Section 50. Earned release credit or good time credit
11 revocation. If a lawsuit is filed by a prisoner in an Illinois
12 or federal court against the State, the Department of
13 Corrections, or the Prisoner Review Board, or against any of
14 their officers or employees, and the court makes a specific
15 finding that a pleading, motion, or other paper filed by the
16 prisoner is frivolous, the Department of Corrections shall
17 conduct a hearing to revoke up to 180 days of good conduct
18 credit by bringing charges against the prisoner sought to be
19 deprived of the good conduct credits before the Prisoner Review
20 Board as provided in subparagraph (a) (8) of Section 3-3-2 of
21 the Unified Code of Corrections. If the prisoner has not
22 accumulated 180 days of good conduct credit at the time of the
23 finding, then the Prisoner Review Board may revoke all good
24 conduct credit accumulated by the prisoner.

25 Section 55. Claims arising under federal law. Except as
26 specifically prohibited by federal law, the provisions of this
27 Act shall also apply to all prisoner suits in State courts
28 asserting claims arising under 42 U.S.C. 1983 or other federal
29 laws.

30 Section 99. Effective date. This Act takes effect upon
31 becoming law.