



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1369

Introduced 2/9/2007, by Sen. James F. Clayborne, Jr.

SYNOPSIS AS INTRODUCED:

New Act

Creates the Prison Litigation Reform Act. Provides that the court, on its own motion or on the motion of a party, shall dismiss any inmate suit relating to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison if the court is satisfied that the action is frivolous, is malicious, seeks monetary relief from a defendant who is immune from such relief, or fails to state a cause of action based upon which relief can be granted. Provides that if the court makes a determination to dismiss a suit based on the content, or lack thereof, of the complaint, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies. Provides that before service of process on the defendants, the court shall review the complaint in any civil action in which an inmate seeks redress from a governmental entity or officer or employee of a governmental entity. Provides that in any inmate suit in which attorney's fees are authorized, such fees shall be awarded only to the extent they were directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which fees may be awarded, and the amount of the fee is proportionately related to the court-ordered relief for the violation or the fee was directly and reasonably incurred in enforcing the relief ordered for the violation. Provides that an inmate may not bring a civil action or appeal a judgment in a civil action or proceeding in forma pauperis if the inmate has, on 3 or more prior occasions while incarcerated or detained in any facility, brought an action or appeal in a State court that was dismissed on the grounds that it was frivolous or malicious, unless the inmate is in imminent danger of serious physical injury.

LRB095 03763 RLC 23792 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning prison litigation.

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 Prison
5 Litigation Reform Act.

6 Section 5. Findings. The General Assembly finds that, while
7 there are legitimate grievances that are made the subject of
8 civil actions filed in State courts by inmates with respect to
9 the conditions of their confinement or the effects of actions
10 by government officials on their lives, many such civil actions
11 are frivolous in nature and serve only to place an additional
12 burden on the already crowded dockets of the courts of the
13 State of Illinois. This has become more troublesome with the
14 passage of the federal Prison Litigation Reform Act, which has
15 served to reduce the filings of inmate suits in federal courts
16 but to increase such filings in State courts. The General
17 Assembly further finds, therefore, that it will advance the
18 general welfare of the citizens of the State of Illinois for
19 there to be enacted a Prison Litigation Reform Act, applicable
20 to civil actions and inmate suits filed in the courts of this
21 State.

22 Section 10. Definitions. In this Act, the enumerated terms

1 shall have the following meanings:

2 (1) "Civil action with respect to prison conditions" or
3 "inmate suit" means any civil proceeding with respect to the
4 conditions of confinement or the effects of actions by
5 government officials on the lives of persons confined in
6 prison, including mandamus actions and actions relating to the
7 revocation of good conduct credit but not including post
8 conviction relief or habeas corpus proceedings, challenging
9 the fact or duration of confinement in prison.

10 (2) "Consent decree" means any relief entered by the court
11 that is based in whole or in part upon the consent or
12 acquiescence of the parties, not including private
13 settlements.

14 (3) "Correctional facility" means any State or local jail,
15 prison, or other correctional center that incarcerates or
16 detains juveniles or adults accused of, convicted of, sentenced
17 for, or adjudicated delinquent for violations of criminal law.

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

21 (5) "Fails to state a cause of action based upon which
22 relief can be granted" means the complaint does not allege a
23 set of facts in support of a claim which would entitle the
24 plaintiff to relief on the claim.

25 (6) "Frivolous" means that a pleading, motion or other
26 filing which purports to be a legal document filed by an inmate

1 in his or her suit meets any one or more of the following
2 criteria: (a) it lacks an arguable basis either in law or in
3 fact; (b) it is being presented for any improper purpose, such
4 as to harass or to cause unnecessary delay or needless increase
5 in the cost of litigation; (c) the claims, defenses, or other
6 legal contentions made therein are not warranted by existing
7 law or by a nonfrivolous argument for the extension,
8 modification, or reversal of existing law or the establishment
9 of new law; (d) the allegations and other factual contentions
10 do not have evidentiary support or, if specifically so
11 identified, are not likely to have evidentiary support after a
12 reasonable opportunity for further investigation or discovery;
13 or (e) the denials of factual contentions are not warranted on
14 the evidence or, if specifically so identified, are not
15 reasonably based on a lack of information or belief.

16 (7) "Inmate" means any person subject to incarceration,
17 detention, or admission to any correctional facility who is
18 accused of, convicted of, sentenced for, or adjudicated
19 delinquent for a violation of criminal law or the terms or
20 conditions of parole, probation, pretrial release, or a
21 diversionary program. Status as an "inmate" is determined as of
22 the time the cause of action arises. Subsequent events,
23 including post-trial judicial action or release from custody,
24 shall not affect such status.

25 (8) "Inmate release order" means any order, including a
26 temporary restraining order or preliminary injunction, that

1 has the purpose or effect of reducing or limiting the inmate
2 population, or that directs the release of inmates from or
3 prohibits the admission of inmates to a correctional facility.

4 (9) "Private settlement agreement" means an agreement
5 entered into among the parties that is not subject to judicial
6 enforcement, other than the reinstatement of the civil
7 proceeding settled by the agreement.

8 (10) "Prospective relief" means all relief other than
9 compensatory monetary damages.

10 (11) "Relief" means all relief in any form that may be
11 granted or approved by the court, and includes consent decrees
12 but does not include private settlement agreements.

13 Section 15. Suits by inmates.

14 (a) For purposes of this Section, the enumerated terms
15 shall have the following meanings:

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

24 (2) "Available" means all administrative remedies
25 adopted by governmental entities, which address claims of

1 the kind asserted by the inmate, even if the administrative
2 remedies do not allow the prisoner the particular kind of
3 relief sought.

4 (b) No inmate suit shall assert a cause of action under
5 State law until all available administrative remedies are
6 exhausted. Exhaustion of all available administrative remedies
7 shall be an element of the plaintiff's case in each inmate
8 suit, to be pled and proved specifically by the plaintiff. If
9 an inmate suit is filed in contravention of this paragraph, the
10 court shall dismiss the suit without prejudice.

11 (c) The court shall take judicial notice of administrative
12 remedies adopted by a governmental entity that have been filed
13 with the clerk of the court in the county where the
14 governmental entity is domiciled.

15 (d) The court, on its own motion or on the motion of a
16 party, shall dismiss any inmate suit if the court is satisfied
17 that the action is frivolous, is malicious, seeks monetary
18 relief from a defendant who is immune from such relief, or
19 fails to state a cause of action based upon which relief can be
20 granted. If the court makes a determination to dismiss a suit
21 based on the content, or lack thereof, of the complaint, the
22 court may dismiss the underlying claim without first requiring
23 the exhaustion of administrative remedies. The court, on its
24 own motion, may raise an exception of improper venue and
25 transfer the suit to a court of proper venue or dismiss the
26 suit.

1 (e) No inmate suit may assert a claim under State law for
2 mental or emotional injury suffered while in custody without
3 alleging and showing a physical injury.

4 (f) The exclusive venue for civil actions with respect to
5 prison conditions shall be the county in which the correctional
6 facility is situated where the inmate was assigned when the
7 cause of action arose. Upon consent of all parties, the court
8 may transfer the suit to a county in which venue otherwise
9 would be proper.

10 (g) The actions of more than one inmate may not be joined
11 and an inmate suit filed or prosecuted pro se may not assert a
12 class action. If a suit names more than one plaintiff or
13 asserts a pro se class action, the claims of all plaintiffs,
14 other than the first named plaintiff, shall be dismissed
15 without prejudice.

16 Section 20. Judicial screening and service of process.

17 (a) Before service on the defendants, the court shall
18 review the complaint in any civil action in which an inmate
19 seeks redress from a governmental entity or officer or employee
20 of a governmental entity. On such review, the court shall
21 identify cognizable claims and shall dismiss the complaint, or
22 any portion of the complaint, if it is frivolous, is malicious,
23 seeks monetary relief from a defendant who is immune from such
24 relief, or fails to state a cause of action upon which relief
25 can be granted.

1 (b) A court shall not authorize or permit service of
2 process in an inmate suit until there has been compliance with
3 both of the following:

4 (1) The screening required in subsection (a) of this
5 Section has been completed; and

6 (2) The fees have been paid or the provisions of the in
7 forma pauperis Section, below, have been satisfied, if the
8 plaintiff is proceeding in forma pauperis.

9 (c) The clerk shall not issue summons in an inmate suit
10 until specifically authorized to do so by the court, as
11 provided in subsection (b) of this Section, and then summons
12 shall be served only upon those defendants specifically ordered
13 by the court to be served.

14 Section 25. Attorney's fees.

15 (a) In any inmate suit in which attorney's fees are
16 authorized, such fees shall be awarded only to the extent they
17 were directly and reasonably incurred in proving an actual
18 violation of the plaintiff's rights protected by a statute
19 pursuant to which fees may be awarded, and the amount of the
20 fee is proportionately related to the court-ordered relief for
21 the violation or the fee was directly and reasonably incurred
22 in enforcing the relief ordered for the violation.

23 (b) Whenever a monetary judgment is awarded in an action
24 described in subsection (a), a portion of the judgment, not to
25 exceed 25%, shall be applied to satisfy the amount of

1 attorney's fees awarded against the defendant. If the award of
2 attorney's fees is not more than 150% of the judgment, the
3 excess shall be paid by the defendant. No award of attorney's
4 fees in an action shall be based on an hourly rate greater than
5 the hourly rate established for payment of court-appointed
6 counsel.

7 (c) Nothing in this Section shall prohibit an inmate from
8 entering into an agreement to pay an attorney's fee in an
9 amount greater than the amount authorized hereunder, if the fee
10 is paid by the individual rather than by the defendant.

11 Section 30. Proceedings in forma pauperis.

12 (a) (1) An inmate who seeks to bring a civil action or file
13 an appeal or writ application in a civil action without
14 prepayment of fees or security must comply with all
15 requirements for proceeding in forma pauperis and shall submit
16 a certified copy of his or her trust fund account statement or
17 institutional equivalent for the 6-month period immediately
18 preceding the filing of the action, notice of appeal, or writ
19 application, obtained from the appropriate official of each
20 correctional facility at which the inmate is or was confined.

21 (2) If an inmate brings a civil action or files an appeal
22 or writ application in forma pauperis as authorized by
23 paragraph (a) (1), the inmate still shall be required to pay the
24 full amount of the fee. The court shall assess and, when funds
25 exist, collect, as a partial payment of the fees required by

1 law, an initial partial filing fee of 20% of the greater of the
2 average monthly deposits to the inmate's account, or the
3 average monthly balance in the inmate's account for the 6-month
4 period immediately preceding the filing of the action, notice
5 of appeal, or writ application.

6 (3) If an inmate brings a civil action, files an appeal, or
7 files a writ application in which the inmate is not allowed to
8 proceed as a pauper, the inmate must pay the required costs in
9 advance. If the inmate does not pay the costs in advance, the
10 civil action, appeal, or writ application shall be dismissed
11 without prejudice.

12 (b) (1) After payment of the initial partial filing fee, as
13 required by paragraph (a) (2) of this Section, the inmate shall
14 be required to make monthly payments of 20% of the preceding
15 month's income credited to the inmate's account. The agency
16 having custody of the inmate shall forward payments from the
17 inmate's account to the clerk of the court each time the amount
18 in the account exceeds \$10 until the filing fees are paid in
19 full.

20 (2) (A) The order granting an inmate's request to proceed in
21 forma pauperis automatically stays all proceedings, including
22 any service of process, until all costs or fees due to the
23 clerk from the inmate in the matter are paid. During the
24 pendency of the stay, the inmate may not take any action to
25 prosecute the suit, including but not limited to filing any
26 pleadings, discovery, or motions, other than a motion for

1 voluntary dismissal or a motion to lift the stay because all
2 costs have been paid.

3 (B) If, at any time during the pendency of the action,
4 additional costs or fees due to the clerk accrue and are unpaid
5 by the inmate, then upon order of the court, on its own motion
6 or on motion of the clerk or any party, the action may be
7 stayed under the terms set out in paragraph (2)(A) until all
8 such additional costs are paid.

9 (C) The automatic stay shall not apply when the court makes
10 a written finding that: (i) the suit is a proceeding for
11 judicial review; (ii) the suit is a post-conviction relief or
12 habeas corpus proceeding challenging the fact or duration of
13 confinement in a correctional facility; or (iii) the inmate is
14 in imminent danger of serious physical injury, the suit solely
15 seeks injunctive relief to avoid the danger, and relief is
16 available in the suit which will avert the danger.

17 (D) Notwithstanding any filing fee, or any portion thereof,
18 that may have been paid, the court shall dismiss the case at
19 any time if the court determines that the allegation of poverty
20 was untrue, or the action or appeal is frivolous, is malicious,
21 seeks monetary relief against a defendant who is immune from
22 such relief, or fails to state a cause of action based upon
23 which relief can be granted.

24 (E) If a judgment against an inmate includes the payment of
25 costs, the inmate shall be required to pay the full amount of
26 the costs ordered, in the same manner as is provided for filing

1 fees.

2 (F) In actions to which this Act applies, the provisions of
3 this Section, to the extent of any conflict with those of the
4 Code of Civil Procedure, shall apply to and govern the payment
5 of filing fees and costs.

6 (G) If an inmate has at least 3 dismissals as described in
7 the Section on successive claims, below, but the inmate does
8 not yet have 3 dismissals that are final under that Section,
9 and, further, if the inmate is disqualified from proceeding as
10 a pauper either in federal court by operation of 28 USC 1915(g)
11 or in the courts of another state by operation of a similar law
12 of that state, then the court on its own motion may, or on
13 motion of a party shall, stay all proceedings in any other
14 prisoner suit or appeal in which the inmate is proceeding as a
15 pauper until such time as the dismissals become final. This
16 subsection (g) shall not apply if the court finds that the
17 inmate is in imminent danger of serious physical injury.

18 Section 35. Successive claims. In no event shall an inmate
19 bring a civil action or appeal a judgment in a civil action or
20 proceeding in forma pauperis if the inmate has, on 3 or more
21 prior occasions while incarcerated or detained in any facility,
22 brought an action or appeal in a State court that was dismissed
23 on the grounds that it was frivolous or malicious, unless the
24 inmate is in imminent danger of serious physical injury.

1 Section 40. Appropriate remedies with respect to
2 correctional facilities conditions.

3 (a) Prospective relief in any civil action with respect to
4 prison conditions shall extend no further than necessary to
5 correct the violation of the State right of a particular
6 plaintiff. The court shall not grant or approve any prospective
7 relief unless the court finds that such relief is narrowly
8 drawn, extends no further than necessary to correct the
9 violation of the State right, and is the least intrusive means
10 necessary to correct the violation of the State right. The
11 court shall give substantial weight to any adverse impact on
12 public safety or the operation of a criminal justice system
13 caused by the relief. The court shall not order any prospective
14 relief that requires or permits a government official to exceed
15 his or her authority under State or local law, or otherwise
16 violates State or local law, unless State law permits such
17 relief to be ordered, the relief is necessary to correct the
18 violation of a State right, and no other relief will correct
19 the violation of the State right. Nothing in this Section shall
20 be construed to authorize the courts, in exercising their
21 remedial powers, to order the construction of prisons or the
22 raising of taxes, or to repeal or detract from otherwise
23 applicable limitations on the remedial powers of the courts.

24 (b) In any civil action with respect to conditions in a
25 correctional facility, and to the extent otherwise authorized
26 by law, the court may enter a temporary restraining order or a

1 preliminary injunction. Preliminary injunctive relief must be
2 narrowly drawn, extend no further than necessary to correct the
3 harm the court finds requires such relief, and be the least
4 intrusive means necessary to correct that harm. The court shall
5 give substantial weight to any adverse impact on public safety
6 or the operation of a criminal justice system caused by the
7 preliminary relief. Preliminary injunctive relief shall expire
8 automatically, 90 days after its entry, unless the court makes
9 the findings required under subsection (a) for the entry of
10 prospective relief and makes the order final before the
11 expiration of the 90-day period.

12 (c) In any civil action with respect to prison conditions,
13 no prisoner release order shall be entered unless a court
14 previously has entered an order for less intrusive relief that
15 has failed to remedy the violation of the State right sought to
16 be remedied through the prisoner release order and the
17 defendant has had a reasonable amount of time to comply with
18 the previous court order.

19 (d) Any State or local official or unit of government whose
20 jurisdiction or function includes the appropriation of funds
21 for the construction, operation, or maintenance of
22 correctional facilities, or the prosecution or custody of
23 persons who may be released from, or not admitted to, a
24 correctional facility as a result of an inmate release order
25 shall have standing to oppose the imposition or continuation in
26 effect of such relief and to seek termination of such relief,

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

3 (e) (1) In any civil action with respect to conditions in a
4 correctional facility, in which prospective relief is ordered,
5 such relief shall be terminable upon the motion of any party or
6 intervener no sooner than 2 years after the date the court
7 granted or approved the prospective relief, or one year after
8 the date the court has entered an order denying termination of
9 prospective relief under this Section, or, in the case of an
10 order issued on or before the effective date of this Act, 2
11 years after such effective date.

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

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

1 (4) Nothing in this Section shall prevent any party or
2 intervener from seeking modification or termination before the
3 relief is terminable hereunder, to the extent that modification
4 or termination otherwise would be legally permissible.

5 (f) In any civil action with respect to conditions in a
6 correctional facility, the court shall not enter or approve a
7 consent decree unless it complies with the limitations on
8 relief set forth in subsection (a). Nothing in this Section
9 shall preclude parties from entering into a private settlement
10 agreement that does not comply with the limitations on relief
11 set forth in subsection (a), if the terms of that agreement are
12 not subject to court enforcement, other than the reinstatement
13 of the civil proceeding settled by the agreement.

14 (g) The court shall promptly rule on any motion to modify
15 or terminate prospective relief in a civil action with respect
16 to conditions in a correctional facility. Any prospective
17 relief subject to a pending motion shall be automatically
18 stayed during the period beginning on the 30th day after such
19 motion is filed, in the case of a motion made under subsection
20 (e), or beginning on the 180th day after such motion is filed,
21 in the case of a motion made under any other law, and ending on
22 the date the court enters a final order ruling on the motion.

23 Section 45. Experts.

24 (a) When otherwise specifically authorized by law, in any
25 inmate suit, the court may appoint an expert who shall be

1 disinterested and objective and will give due regard to the
2 public safety. If the court determines that the appointment of
3 an expert is necessary, the court shall request that the
4 defendant and the plaintiff each submit a list of not more than
5 5 persons to serve as the expert. Each side shall have the
6 opportunity to strike up to 3 persons from the opposing party's
7 list. The court shall select the expert from the persons
8 remaining on the lists after the striking of names. Any party
9 shall have the right to an interlocutory appeal of the judge's
10 selection of an expert under this Section on the ground of
11 partiality.

12 (b) An expert appointed under this Section may be
13 authorized to conduct hearings and prepare proposed findings of
14 fact on the record and may assist in the development of
15 remedial plans. The expert shall not make any findings or
16 communications ex parte. An expert may be appointed during the
17 remedial phase of a civil action with respect to conditions in
18 a correctional facility only upon a finding that the remedial
19 phase will be sufficiently complex to warrant such an
20 appointment.

21 (c) In any civil action with respect to conditions in a
22 correctional facility, in which an expert is appointed under
23 this Section, the court shall review the appointment of the
24 expert every 6 months to determine whether the services of the
25 expert continue to be required. The expert may be removed at
26 any time. In no event shall the appointment of an expert extend

1 beyond the termination of the relief.

2 (d) Notwithstanding any other law to the contrary, the
3 compensation to be allowed to an expert shall not be greater
4 than the hourly rate established for the payment of
5 court-appointed counsel, plus costs reasonably incurred by the
6 expert. Such compensation and costs shall be paid with funds
7 available to the court through the county in which the inmate
8 suit is pending.

9 Section 50. Payment of damage award in satisfaction of
10 pending restitution orders. Any damages awarded to an inmate
11 in connection with a civil action brought against any
12 correctional facility or against any official or agent of such
13 correctional facility first shall be paid directly to satisfy
14 any outstanding restitution orders pending against the inmate.
15 The remainder of any such award, after full payment of all
16 pending restitution orders, shall be forwarded to the inmate.
17 Prior to payment of any damages awarded under this Section,
18 reasonable efforts shall be made to notify the victims of the
19 crime of which the inmate was convicted concerning the pending
20 payment of damages.

21 Section 55. Earned release credit or good time credit
22 revocation. If a civil action with respect to prison conditions
23 is filed by an inmate in an Illinois or federal court against
24 the State, the Department of Corrections, the Prisoner Review

1 Board, or any of their officers or employees, and the court
2 makes a specific finding that a pleading, motion, or other
3 paper filed by the prisoner is frivolous, the Department of
4 Corrections shall conduct a hearing to revoke up to 180 days of
5 good conduct credit by bringing charges against the prisoner
6 sought to be deprived of the good conduct credits before the
7 Prisoner Review Board, as provided in subparagraph (a)(8) of
8 Section 3-3-2 of the Unified Code of Corrections. If the
9 prisoner has not accumulated 180 days of good conduct credit at
10 the time of the finding, then the Prisoner Review Board may
11 revoke all good conduct credit accumulated by the prisoner.

12 Section 60. Claims arising under federal law. Except as
13 specifically prohibited by federal law, the provisions of this
14 Act also shall apply to all prisoner suits brought in State
15 court asserting claims arising under 42 USC 1983 or other
16 federal laws.