

1 SB209
2 139422-3
3 By Senator Orr
4 RFD: Judiciary
5 First Read: 07-FEB-12

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To establish the Alabama Prisoner Litigation Reform
12 Act, relating to pro se civil actions and civil court
13 procedures of persons incarcerated; and to establish court
14 guidelines.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. This act shall be known and may be cited
17 as the "Alabama Prisoner Litigation Reform Act."

18 Section 2. The provisions of this act shall apply to
19 all pro se civil actions for money damages relating to terms
20 and conditions of confinement brought under the laws of the
21 State of Alabama, or for injunctive, declaratory, or mandamus
22 relief, brought by prisoners incarcerated in any state or
23 local correctional facility. Nothing in this act shall apply
24 to actions brought pursuant to the Alabama Rules of Criminal
25 Procedure or pursuant to Section 15-21-1, et seq. No prisoner
26 petition for writ of certiorari may be filed more than one
27 year after the incident or omission complained of, or one year

1 after any administrative remedy contemplated by this act has
2 been exhausted, whichever comes later.

3 Section 3. For purpose of this act, the following
4 words have the following meanings:

5 (1) ADMINISTRATIVE REMEDIES. Written policies
6 adopted or approved by the Alabama Department of Corrections
7 and local correctional authorities or jails or any private
8 company or contractor providing any services within any
9 correctional facility which establish an internal procedure
10 wherein an inmate must file a written complaint to the Alabama
11 Department of Corrections, correctional or jail authorities,
12 or any private company or contractor providing any services
13 within any correctional facility prior to filing a pro se
14 civil action for claims related to the conditions of
15 confinement or the effect of actions by government officials
16 on the lives of prisoners incarcerated in prison. To be
17 effective, the written procedure must be prominently posted
18 and published to the prisoners.

19 (2) AVAILABLE. All administrative remedies adopted
20 or approved by the Alabama Department of Corrections and local
21 correctional authorities or jails or any private company or
22 contractor providing any services within any correctional
23 facility which address claims of the kind asserted by the
24 prisoner even if the administrative remedies do not allow the
25 prisoner the particular kind of relief sought.

26 (3) DEPARTMENT. The Alabama Department of
27 Corrections.

1 Section 4. (a) No prisoner incarcerated by the
2 department shall assert a pro se civil claim under state law
3 until the prisoner exhausts all administrative remedies
4 available. If a prisoner files a pro se civil action in
5 contravention of this section, the court shall dismiss the
6 action without prejudice.

7 (b) The court shall take judicial notice of
8 administrative remedies adopted by the department that have
9 been filed with the clerk of the Supreme Court of Alabama.

10 (c) (1) The court, on its own motion or on the motion
11 of a party, may dismiss any prisoner pro se civil action if
12 the court is satisfied that the action is:

13 a. Frivolous.

14 b. Malicious.

15 c. Fails to state a cause of action.

16 d. Seeks monetary relief from a defendant who is
17 immune from such relief.

18 e. Fails to state a claim upon which relief can be
19 granted.

20 (2) If the court makes a determination to dismiss an
21 action based on the content, or lack thereof, of the petition,
22 the court may dismiss the underlying claim without first
23 exhausting administrative remedies.

24 (3) The court, on its own motion, may raise an
25 exception of improper venue and transfer the action to a court
26 of proper venue or dismiss the action.

1 (d) (1) Any defendant may waive the right to reply to
2 any pro se civil action brought by a person confined by the
3 department or to any prisoner's pro se civil action.

4 Notwithstanding any other law or rule of procedure, a waiver
5 shall not constitute an admission of the allegations contained
6 in the petition or waive any affirmative defenses available to
7 the defendant.

8 (2) No relief shall be granted to a plaintiff's pro
9 se civil action unless an answer has been filed. The court may
10 require any defendant to answer a petition brought under this
11 section if it finds that the plaintiff has a reasonable
12 opportunity to prevail on the merits.

13 (e) (1) In any pro se civil action brought with
14 respect to prison conditions by a prisoner confined by the
15 department, to the extent practicable, pretrial proceedings in
16 which the prisoner's participation is required or permitted
17 shall be conducted by telephone, video conference, or other
18 communications technology without removing the prisoner from
19 the facility in which he or she is currently confined.

20 (2) After providing the parties an opportunity to
21 file supporting and opposing memoranda, a court may rule on
22 exceptions and motions, without holding a contradictory
23 hearing.

24 (3) Hearings may be conducted at the facility in
25 which the prisoner is currently confined subject to agreement
26 by the state or local entity of government with custody over
27 the prisoner.

1 (4) The court shall allow counsel to participate by
2 telephone, video conference, or other telecommunications
3 technology in any hearing held at the facility to the extent
4 practicable.

5 (f) No prisoner pro se civil action may assert a
6 claim under state law for mental or emotional injury suffered
7 while in custody without a prior showing of physical injury.

8 (g) (1) The pro se civil actions of more than one
9 prisoner may not be cumulated and a prisoner's action that is
10 filed or prosecuted pro se may not assert a class action.

11 (2) If a pro se civil action names more than one
12 plaintiff or asserts a pro se class action, the actions of any
13 plaintiff, other than the first named plaintiff, shall be
14 dismissed without prejudice.

15 Section 5. (a) (1) A prisoner seeking in forma
16 pauperis status shall provide the court with a certified copy
17 of his or her prisoner money on deposit account for the
18 preceding 12 months.

19 (2) Any prisoner granted leave to proceed in forma
20 pauperis shall repay any filing fees and pay any taxed costs
21 by making monthly installments, until fully paid, equal to 20
22 percent of the inmate's average monthly prisoner money on
23 deposit balance for the prior 12 months, or a similarly
24 determined amount if 12 months of account activity is not
25 available.

26 (3) If the court determines the prisoner has had no
27 deposits in his or her inmate trust account for the preceding

1 six months, the court shall permit the prisoner to proceed
2 without paying the filing fee and costs.

3 (4) In cases where in forma pauperis status is
4 granted, the filing fee of a pro se civil action shall be
5 taxed to the inmate at the end of the case. The taxing of
6 costs against a non-prevailing inmate shall be at the court's
7 discretion.

8 (5) Any prisoner failing to make any payment when
9 due shall have his or her case dismissed without prejudice.

10 (b) The court shall deny in forma pauperis status to
11 any prisoner who has had three or more pro se civil actions or
12 appeals dismissed by any federal or state court for being
13 frivolous, malicious, or for failure to state a claim, unless
14 the prisoner shows that he or she is in imminent danger of
15 serious physical injury at the time of filing his or her
16 motion for judgment, or the court determines that it would be
17 manifest injustice to deny in forma pauperis.

18 Section 6. (a) (1) In any pro se action in which any
19 defendant is the State of Alabama or one of its officers,
20 employees, or agents, upon the grant of in forma pauperis
21 status or receipt of the filing fee and costs, the prisoner
22 shall serve the office of the Attorney General with a copy of
23 the motion for judgment and all necessary supporting papers.
24 Additionally, if the pro se prisoner action named the Alabama
25 Department of Corrections or any of its officials, employees,
26 or agents as a respondent or defendant, the prisoner must also
27 serve the Legal Division of the Alabama Department of

1 Corrections with a copy of the action. Nothing in this act
2 shall be construed to eliminate the prisoner's duty under the
3 Alabama Rules of Civil Procedure to personally serve
4 individual defendants or respondents named as parties.

5 (2) The office of the Attorney General or the
6 Alabama Department of Corrections shall have no fewer than 60
7 days from receipt in which to file responsive pleadings.

8 (3) A pro se prisoner's failure to state his or her
9 claims in a written motion for judgment plainly stating facts
10 sufficient to support his or her cause of action, accompanied
11 by all necessary supporting documentation, may be grounds for
12 dismissal of the action.

13 Section 7. (a) Oral argument on any motion in any
14 prisoner pro se civil action shall be heard orally only at the
15 request of the court; whenever possible, the court shall rule
16 upon the record before it.

17 (b) No pro se prisoner shall be permitted to request
18 subpoenas for witnesses or documents, or file discovery
19 requests, until the court has ruled upon any motion to dismiss
20 or dispositive motion.

21 (c) Where a pro se case proceeds past the initial
22 dispositive motions, the court shall require the prisoner
23 seeking discovery to demonstrate that his or her requests are
24 relevant and material to the issues in the case.

25 (d) (1) No subpoena for witnesses or documents shall
26 be issued unless a judge of the court has reviewed the

1 subpoena request and specifically authorized a subpoena to be
2 issued.

3 (2) The court shall exercise its discretion in
4 determining the scope of the subpoena and may condition its
5 issuance on such terms as the court finds appropriate.

6 (3) The court shall take into account the burden
7 placed upon the object of the subpoena in relation to the
8 needs of the case, the amount in controversy, and the
9 importance of the issues at stake in the litigation.

10 Section 8. (a) All records maintained by the
11 department in the name of the individual prisoners, including
12 prisoner medical records, shall be the property of the
13 department.

14 (b) In any pro se civil action subject to this act,
15 where the State of Alabama, an agency of the State of Alabama,
16 an employee of the State of Alabama, or a private contractor
17 providing services to the department is named as a defendant,
18 the commissioner of the department may share any records
19 maintained in the name of the prisoner filing suit with
20 counsel representing the above-named defendants.

21 Section 9. (a) Damages awarded to a prisoner in
22 connection with a pro se civil action brought against any
23 prison or against any official or agent of such prison shall
24 be paid directly to satisfy any outstanding restitution orders
25 pending against the prisoner. Any remaining amounts shall be
26 forwarded to the prisoner.

1 (b) Prior to payment of any damages, reasonable
2 efforts shall be made to notify the victims of the crime for
3 which the prisoner was convicted and incarcerated concerning
4 the pending payment of any damages.

5 Section 10. The provisions of this act are
6 severable. If any part of this act is declared invalid or
7 unconstitutional, that declaration shall not affect the part
8 which remains.

9 Section 11. This act shall become effective
10 immediately following its passage and approval by the
11 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 07-FEB-12

Read for the second time and placed on the calen-
dar with 1 substitute and..... 22-MAR-12

Read for the third time and passed as amended 26-APR-12

Yeas 30
Nays 0

Patrick Harris
Secretary