

1 SB106
2 147420-4
3 By Senator Orr
4 RFD: Finance and Taxation General Fund
5 First Read: 05-FEB-13

1 SB106

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4 ENROLLED, An Act,

5 Relating to civil actions; to establish guidelines
6 for all pro se civil actions brought by prisoners incarcerated
7 in any state correctional facility in this state; to require a
8 prisoner to exhaust certain administrative remedies prior to
9 filing a pro se civil action; to require a showing of physical
10 injury in all claims for mental or emotional injury; to
11 provide for the payment of certain court costs by prisoners
12 proceeding in forma pauperis; to require the Department of
13 Corrections and certain other correctional entities to adopt
14 procedures for resolving certain claims by pro se prisoners;
15 to provide for the maintenance of certain records; to provide
16 that any damages awarded to a prisoner must first be paid to
17 satisfy any outstanding restitution orders; to provide certain
18 procedures for oral argument requests; and to provide
19 procedures for certain suits involving prison conditions to be
20 resolved by a three-judge panel.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

24 Section 2. This act shall apply to all pro se civil
25 actions for money damages relating to terms and conditions of

1 confinement brought under the laws of this state, or for
2 injunctive, declaratory, or mandamus relief, brought by
3 prisoners incarcerated in any state correctional facility.
4 Nothing in this act shall apply to actions brought pursuant to
5 the Alabama Rules of Criminal Procedure or pursuant to Section
6 15-21-1, Code of Alabama 1975.

7 Section 3. For purpose of this act, the following
8 words shall have the following meanings:

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

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

1 (3) DEPARTMENT. The Alabama Department of
2 Corrections.

3 Section 4. (a) The department and any private
4 company or contractor providing any services within any
5 correctional facility shall adopt administrative remedies for
6 prisoners. The administrative remedies shall be prominently
7 posted and published to all prisoners.

8 (b) A prisoner incarcerated by the department may
9 not assert a pro se civil claim under state law until the
10 prisoner exhausts all administrative remedies available. If a
11 prisoner files a pro se civil action in contravention of this
12 section, the court shall dismiss the action without prejudice.

13 (c) The court shall take judicial notice of
14 administrative remedies adopted by the department that have
15 been filed with the Clerk of the Supreme Court of Alabama.

16 (d) (1) The court, on its own motion or on the motion
17 of a party, may dismiss any prisoner pro se civil action if
18 the court is satisfied that the action is any of the
19 following:

- 20 a. Frivolous.
- 21 b. Malicious.
- 22 c. Fails to state a cause of action.
- 23 d. Seeks monetary relief from a defendant who is
24 immune from such relief.

1 e. Fails to state a claim upon which relief can be
2 granted.

3 (2) If the court makes a determination to dismiss an
4 action based on the content of the petition, the court may
5 dismiss the underlying claim without first exhausting
6 administrative remedies available to the prisoner.

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

10 (e) (1) Any defendant may waive the right to reply to
11 any pro se civil action brought by a person confined by the
12 department or to any prisoner's pro se civil action.
13 Notwithstanding any other law or rule of procedure, a waiver
14 shall not constitute an admission of the allegations contained
15 in the petition or waive any affirmative defenses available to
16 the defendant.

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

22 (f) (1) In any pro se civil action brought with
23 respect to prison conditions by a prisoner confined by the
24 department, to the extent practicable, pretrial proceedings in
25 which the prisoner's participation is required or permitted

1 shall be conducted by telephone, video conference, or other
2 communications technology without removing the prisoner from
3 the facility in which he or she is currently confined.

4 (2) After providing the parties an opportunity to
5 file supporting and opposing memoranda, a court may rule on
6 exceptions and motions without holding a hearing.

7 (3) Hearings may be conducted at the facility in
8 which the prisoner is currently confined subject to agreement
9 by the state.

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

14 (g) No pro se civil action by a prisoner may assert
15 a claim under state law for mental or emotional injury
16 suffered while in custody without a prior showing of physical
17 injury.

18 (h) (1) The pro se civil actions of more than one
19 prisoner may not be consolidated, and a prisoner's action that
20 is filed or prosecuted pro se may not assert a class action.

21 (2) If a pro se civil action names more than one
22 plaintiff or asserts a pro se class action, the actions of any
23 plaintiff, other than the first named plaintiff, shall be
24 dismissed without prejudice.

1 (i) No prisoner may file a petition for writ of
2 certiorari more than one year after the incident or omission
3 complained of or one year after any administrative remedy has
4 been exhausted, whichever comes later.

5 Section 5. (a) (1) A prisoner seeking in forma
6 pauperis status shall provide the court with a certified copy
7 of his or her prisoner money account for the preceding 12
8 months.

9 (2) Any prisoner granted leave to proceed in forma
10 pauperis shall repay any filing fees and pay any taxed costs
11 by making monthly installments, until fully paid, equal to 20
12 percent of the prisoner's average monthly prisoner money
13 balance for the prior 12 months, or a similarly determined
14 amount if 12 months of account activity is not available.

15 (3) If the court determines the prisoner has had no
16 deposits in his or her inmate trust account for the preceding
17 twelve months, the court shall permit the prisoner to proceed
18 without paying the filing fee and costs.

19 (4) In cases where in forma pauperis status is
20 granted, the filing fee of a pro se civil action shall be
21 taxed to the prisoner at the end of the case. The taxing of
22 costs against a non-prevailing prisoner shall be at the
23 court's discretion.

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

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

9 Section 6. (a) (1) In any pro se action in which any
10 defendant is the State of Alabama or one of its officers,
11 employees, or agents, upon the grant of in forma pauperis
12 status or receipt of the filing fee and costs, the prisoner
13 shall serve the office of the Attorney General with a copy of
14 the motion for judgment and all necessary supporting papers.
15 Additionally, if the pro se action named the department or any
16 of its officials, employees, or agents as a respondent or
17 defendant, the prisoner shall also serve the Legal Division of
18 the department with a copy of the action. Nothing in this act
19 shall be construed to eliminate the prisoner's duty under the
20 Alabama Rules of Civil Procedure to personally serve
21 individual defendants or respondents named as parties.

22 (2) The office of the Attorney General or the
23 department shall file responsive pleadings within 60 days of
24 receipt of the notice.

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

6 Section 7. (a) Oral argument on any motion in any
7 prisoner pro se civil action shall be heard orally only at the
8 request of the court. Whenever possible, the court shall rule
9 upon the record before it.

10 (b) No pro se prisoner shall be permitted to request
11 subpoenas for witnesses or documents, or file discovery
12 requests, until the court has ruled upon any motion to dismiss
13 or other dispositive motion.

14 (c) Where a pro se case proceeds past the initial
15 dispositive motion phase, the court shall require the prisoner
16 seeking discovery to demonstrate that his or her requests are
17 relevant and material to the issues in the case.

18 (d) (1) No subpoena for witnesses or documents shall
19 be issued unless a judge of the court has reviewed the
20 subpoena request and specifically authorized a subpoena to be
21 issued.

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

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

5 Section 8. (a) All records maintained by the
6 department in the name of an individual prisoner, including
7 medical records, shall be the property of the department.

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

15 Section 9. (a) Damages awarded to a prisoner in
16 connection with a pro se civil action brought against any
17 prison or against any official or agent of such prison shall
18 be paid directly to satisfy any outstanding restitution orders
19 pending against the prisoner. Any remaining amounts shall be
20 forwarded to the prisoner.

21 (b) Prior to payment of any damages, reasonable
22 efforts shall be made to notify the victims of the crime for
23 which the prisoner was convicted and incarcerated concerning
24 the pending payment of any damages.

1 Section 10. (a) In any civil action with respect to
2 prison conditions, no prisoner release order shall be entered
3 unless both of the following are satisfied:

4 (1) A court has previously entered an order for less
5 intrusive relief that has failed to remedy the deprivation of
6 the right sought to be remedied through the prisoner release
7 order.

8 (2) The defendant has had a reasonable amount of
9 time to comply with the previous court orders.

10 (b) In any civil action in state court with respect
11 to prison conditions, a prisoner release order shall be
12 entered by a three-judge court, if the requirements of
13 subsection (f) have been met.

14 (c) In any action required to be heard and
15 determined by a court of three judges, the composition and
16 procedure of the court shall be as follows:

17 (1) Upon the filing of a request for three judges,
18 the judge to whom the request is presented shall immediately
19 notify the Chief Justice of the Alabama Supreme Court, who
20 shall designate an active or retired district or circuit judge
21 in good standing, and the presiding judge of the Alabama Court
22 of Criminal Appeals, who shall designate an active or retired
23 district or circuit judge in good standing. The judges so
24 designated, and the judge to whom the request was presented,

1 shall serve as members of the court to hear and determine the
2 action or proceeding.

3 (2) A single judge may conduct all proceedings
4 except the trial and enter all orders permitted by the Rules
5 of Civil Procedure except as provided in this subsection. The
6 judge may grant a temporary restraining order on a specific
7 finding, based on evidence submitted, that specified
8 irreparable damage will result if the order is not granted. An
9 order, unless previously revoked by the circuit judge, shall
10 remain in force only until the hearing and determination by
11 the circuit court of three judges of an application for a
12 preliminary injunction. A single judge shall not appoint a
13 master, order a reference, hear and determine any application
14 for a preliminary or permanent injunction or motion to vacate
15 the injunction, or enter judgment on the merits. Any action of
16 a single judge may be reviewed by the full court at any time
17 before final judgment.

18 (d) A party seeking a prisoner release order in
19 state court shall file with any request for such relief a
20 request for a three-judge court and materials sufficient to
21 demonstrate that the requirements of subsection (a) have been
22 met.

23 (e) If the requirements under subsection (a) have
24 been met, a judge before whom a civil action with respect to
25 prison conditions is pending who believes that a prison

1 release order should be considered may sua sponte request the
2 convening of a three-judge court to determine whether a
3 prisoner release order should be entered.

4 (f) The three-judge court shall enter a prisoner
5 release order only if the court finds clear and convincing
6 evidence of both of the following:

7 (1) Crowding is the primary cause of the violation
8 of a right.

9 (2) No other relief will remedy the violation of the
10 right.

11 (g) Any state unit of government whose jurisdiction
12 or function includes the appropriation of funds for the
13 construction, operation, or maintenance of program facilities,
14 or the prosecution or custody of persons who may be released
15 from, or not admitted to, a prison as a result of a prisoner
16 release order shall have standing to oppose the imposition or
17 continuation in effect of such relief and to seek termination
18 of such relief, and shall have the right to intervene in any
19 proceeding relating to such relief.

20 Section 11. The provisions of this act are
21 severable. If any part of this act is declared invalid or
22 unconstitutional, that declaration shall not affect the part
23 which remains.

1 Section 12. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB106
Senate 26-FEB-13
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Passed: 23-APR-13

By: Senator Orr