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HOUSE BILL 439

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

William W. Fuller

AN ACT

**RELATING TO CORRECTIONS; PROVIDING FOR RESTRICTIONS ON CIVIL
ACTIONS INITIATED BY INMATES.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. STATE INMATES--RESTRICTIONS ON CIVIL ACTIONS
INITIATED BY INMATES. --**

**A. A state inmate who seeks to file a civil
action, including an appeal of a judgment in a civil action,
without prepayment of a filing fee, shall submit an affidavit
to the court requesting to proceed as an indigent. The
affidavit shall be accompanied by a certified copy of the
inmate's trust fund account statement for the six-month period
immediately preceding the filing of the civil action.**

**B. If the court allows the inmate to proceed as an
indigent, the inmate shall still be required to pay the full**

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1 amount of the filing fee. The court shall assess and collect
2 an initial, partial filing fee that is twenty percent of the
3 average monthly deposits to the inmate's trust fund account or
4 the average monthly balance in the inmate's trust fund account
5 for the six-month period immediately preceding the inmate's
6 filing of a civil action, whichever amount is greater.

7 Following payment of the initial, partial filing fee, the
8 inmate shall be required to make monthly payments that equal
9 twenty percent of the average monthly deposits to the inmate's
10 trust fund account for the six-month period immediately
11 preceding the inmate's filing of the civil action. The
12 correctional facility where the inmate is incarcerated shall
13 forward the monthly payments from the inmate's trust fund
14 account to the clerk of the court until the filing fee is paid
15 in full.

16 C. Notwithstanding the provisions of Subsection B
17 of this section, an inmate shall not be prohibited from filing
18 a civil action because the inmate does not have the means to
19 pay an initial, partial filing fee. In no event shall the
20 amount of the filing fee collected from an inmate exceed the
21 amount of a filing fee for a civil action that is authorized
22 by statute or court rule.

23 D. Notwithstanding the payment or partial payment
24 of a filing fee by an inmate, the court on its own motion or
25 on the motion of a party shall dismiss a complaint initiated

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1 by an inmate in a civil action if the court determines that
2 the inmate's affidavit alleging indigency is false.

3 E. If an inmate has, on three or more previous
4 occasions, initiated a civil action while incarcerated in this
5 state, and those complaints were dismissed on the grounds that
6 the complaints were frivolous, malicious or failed to state a
7 claim upon which relief could be granted, the inmate shall not
8 be allowed to file additional civil actions. Notwithstanding
9 the provisions of this subsection, an inmate may be allowed to
10 file a civil action if:

11 (1) the inmate is in imminent danger of
12 serious physical injury; or

13 (2) an attorney licensed in this state
14 certifies that the civil action states a cognizable claim and
15 that there is a sound basis in fact and law for filing the
16 civil action.

17 Section 2. EFFECTIVE DATE. -- The effective date of the
18 provisions of this act is July 1, 2001.