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HOUSE BILL 305

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY
Ron Godbey

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
amount of the filing fee. The court shall assess and collect

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

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

22 D. Notwithstanding the payment or partial payment
23 of a filing fee by an inmate, the court on its own motion or
24 on the motion of a party shall dismiss a complaint initiated
25 by an inmate in a civil action if the court determines that
the inmate's affidavit alleging indigency is false.

E. If an inmate has, on three or more previous
occasions, initiated a civil action while incarcerated in

underscoring material = new
~~[bracketed material] = delete~~

1 this state, and those complaints were dismissed on the
2 grounds that the complaints were frivolous, malicious or
3 failed to state a claim upon which relief could be granted,
4 the inmate shall not be allowed to file additional civil
5 actions. Notwithstanding the provisions of this subsection,
6 an inmate may be allowed to file a civil action if:

- 7 (1) the inmate is in imminent danger of
- 8 serious physical injury; or
- 9 (2) an attorney licensed in this state
- 10 certifies that the civil action states a cognizable claim and
- 11 that there is a sound basis in fact and law for filing the
- 12 civil action.

13 Section 2. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2000.