

SECOND ENROLLED HOUSE  
BILL NO. 2205

By: Wilt of the House

and

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An Act relating to inmate litigation reform; amending 57 O.S. 2001, Section 566, as last amended by Section 10 of Enrolled Senate Bill No. 1397 of the 2nd Session of the 49th Oklahoma Legislature, which relates to the dismissal of inmate civil actions; expanding definition of inmate; amending Section 11, Chapter 402, O.S.L. 2002 (57 O.S. Supp. 2003, Section 566.4), which relates to the prohibition of certain civil actions; requiring compliance with provisions of the Governmental Tort Claims Act prior to filing suit; applying limitations on venue to actions filed by former prisoners; requiring stay of proceedings and discovery under certain circumstances; prohibiting the acceptance of liens or filing of affidavits under certain circumstances; repealing Section 18 of Enrolled Senate Bill No. 1397 of the 2nd Session of the 49th Oklahoma Legislature, which relates to an effective date; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 57 O.S. 2001, Section 566, as last amended by Section 10 of Enrolled Senate Bill No. 1397 of the 2nd Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 566. A. Any action by an inmate initiated against any person, party or entity, the state, the Department of Corrections, another state agency, or political subdivision, or an original action in an appellate court, or an appeal of an action whether or not the plaintiff was represented in the district court, may be:

1. Dismissed with or without prejudice, by the court on its own motion or on a motion of the defendant, if all administrative and statutory remedies available to the inmate have not been exhausted in a timely manner; or

2. Dismissed with prejudice, by the court on a motion of the defendant, if the court is satisfied that the action is frivolous or malicious.

B. As used in this section:

1. "Frivolous" means having no reasonable basis in law or fact, or lacking any good faith legal argument for the extension, modification, or reversal of existing law, or being maintained solely or primarily for delay or to harass the party filed against;

2. "Inmate" or "inmate in a penal institution" includes, but is not limited to, a person in the custody or under the supervision of the Department of Corrections or the Federal Bureau of Prisons, a person who has been convicted of a crime and is incarcerated for that crime in a county jail, a person who is being held in custody for trial or sentencing, or a person on probation or parole; and

3. "Malicious" means filing numerous actions, or actions brought in bad faith on de minimus issues.

C. If the court determines from the pleadings or the evidence that one or more of the causes of action are frivolous or malicious, any one or more of the following sanctions may be imposed, after notice to the inmate and an opportunity for the inmate to respond, without the need for an additional hearing:

1. Award attorney fees and actual costs incurred by the state, the Department of Corrections, another state agency, a political subdivision, the Attorney General's Office, or the defendant, not to exceed Two Thousand Five Hundred Dollars (\$2,500.00) per frivolous cause of action;

2. Court costs not to exceed Five Hundred Dollars (\$500.00) per cause of action;

3. Order the Department of Corrections to revoke up to seven hundred twenty (720) earned credits accrued by the inmate. In any case in which the prisoner submits a frivolous or malicious claim, or one that is intended solely or primarily for delay or to harass the party filed against, or testifies falsely or otherwise presents false evidence or information to the court in depositions or in a notarized statement to the court or commits a fraud upon the court, the prisoner shall suffer a loss of earned credits. The earned credits shall be deducted upon a finding of fact and an order of the court. In the absence of such a finding by the court and upon review and recommendation by the Office of the Attorney General, a prison disciplinary hearing may be held to determine whether the prisoner has filed such a claim or evidence. Upon such a finding, the earned credits of the prisoner shall be revoked by the Department or political subdivision;

4. Order the Department or political subdivision to revoke permission to have nonessential personal property of the inmate, including, but not limited to, televisions, radios, stereos, or tape recorders. If permission is revoked, the Department shall take appropriate precautions to protect the property during the period of the revocation;

5. Impose a civil sanction in an amount not to exceed One Thousand Dollars (\$1,000.00); or

6. Impose a monetary judgment against the inmate, not to exceed Five Hundred Dollars (\$500.00), to be paid to each named defendant.

D. Any award of attorney fees, or costs, or the imposition of a sanction shall serve as a judgment against the inmate and the Department or political subdivision is authorized to take up to eighty percent (80%) of the inmate's nonmandatory savings trust funds per month until paid. The judgment shall be subject to execution without further order of any court for a period of seven (7) years from the date of an award or imposition of a sanction.

SECTION 2. AMENDATORY Section 11, Chapter 402, O.S.L. 2002 (57 O.S. Supp. 2003, Section 566.4), is amended to read as follows:

Section 566.4 A. No action may be brought in a court of this state by a prisoner for mental or emotional injury allegedly suffered while under arrest, being detained, or in custody or incarcerated without a prior showing of actual physical injury.

B. 1. Neither the state, any of its agencies or boards, the Department of Corrections, any county jail, city jail nor their members, agents, servants or employees shall be liable for any form of civil claim or action alleged to have arisen from any theory of contract law. No arrest or conviction resulting in detention or incarceration shall create any contractual obligation, either actual, implied or at common law, between the prisoner and the state, any of its agencies or boards, the Department of Corrections, any county jail, city jail nor their members, agents, servants or employees. No policy or internal management procedure issued for the management of the prison or jail shall constitute any contractual relationship or obligation between the state, agency, board, commission, prison, jail, or any of its officers, members, servants or employees, and the prisoner or any visitor to the prison or jail.

2. No tort action or civil claim may be filed against any employee, agent, or servant of the state, the Department of Corrections, or any county jail or any city jail alleging acts related to the duties of the employee, agent or servant, until all of the notice provisions of the Governmental Tort Claims Act have been fully complied with by the claimant. This requirement shall apply to any claim against an employee of the state, the Department of Corrections, or any county jail or city jail in either their official or individual capacity.

C. No civil action of any type may be brought seeking an injunction or temporary restraining order against any city, county or state agency, or any officer or employee thereof, brought by a plaintiff who is currently incarcerated in any jail, state prison or private prison in the state if the claim alleges matters arising from the incarceration of the plaintiff and related to management of the prison, including but not limited to, prison transfers, cell assignments, prison job or work assignments and disciplinary action.

D. In any complaint or allegation made by a prisoner against any person holding a license to any state court, agency, board, commission or association which issues any form of license, in which the state court, agency, board, commission or association has made a determination that the complaint of the prisoner is frivolous, malicious or without merit, the state court, agency, board, commission or association may sanction the prisoner as provided for by law.

E. No prisoner of any city or county jail or of any state, federal or private prison in Oklahoma or any person on parole or probation may obtain any public records maintained by any government entity and pertaining in any manner to any public employee, officer or to any citizen, or any criminal history record of any convicted felon. No prisoner, probationer or parolee may obtain without prepayment of the required fees and costs any other public record subject to release. The Director of the Department of Corrections shall promulgate a rule for the release of criminal history records available to the public which shall include the requirement that requests for criminal history records include the name of the person whose record is being requested and shall charge Fifteen Dollars (\$15.00) for each completed request responded to in any form of written communication by the Department.

F. No default judgment shall be rendered against any person, city, county or state agency, or any officer or employee thereof, in any form of civil action brought by a plaintiff who is currently incarcerated in any jail, state prison or private prison in the state.

G. Venue for tort actions filed by a prisoner or a former prisoner of any state prison in the state shall be as follows:

1. Venue for actions filed by any prisoner of any state prison or private prison in which the state, the Department of Corrections, the Board of Corrections as a whole or individual members, or any officer or employee that has multicounty responsibilities is named as a party shall be in the county of the official residence of the Department of Corrections; and

2. Venue for tort actions filed by prisoners of a county jail or city jail, and not involving the Department of Corrections, but against the sheriff, jailer, county officials or employees, or city officials or employees shall be in the county where the jail is located.

The limitations on venue set out in this section shall also apply to tort actions filed by former prisoners, if said tort action is based on facts that occurred while the plaintiff was a prisoner.

H. The Attorney General, district attorneys and the general counsel of the Department of Corrections shall notify the Pardon and Parole Board of all lawsuits filed by any prisoner in which a determination was made by a court that the lawsuit was either frivolous or malicious.

I. The Department of Corrections may assess an administrative fee not to exceed Five Dollars (\$5.00) for the processing of any grievance or disciplinary report that has been appealed to the Director and shall charge prisoners for the costs of any supplies, materials or services provided to the inmate at the request of the inmate. Any fees collected pursuant to this subsection shall be deposited into the Department of Corrections Revolving Fund. If the appeal of the grievance or the disciplinary report results in a finding in favor of the prisoner, all fees and costs collected pursuant to this section shall be returned to the prisoner.

J. Judgments rendered against prisoners and received by the Department of Corrections for, but not limited to, monetary damages, child support, transportation costs, filing fees, court costs, sanctions or attorney fees may be withdrawn by the Department from any funds deposited into a prison trust account of the prisoner and forwarded to the prevailing party.

K. ~~The court, on its own motion or upon~~ Upon motion of the defendant or the court for a special report in any civil action filed by a prisoner or attorney of the prisoner against any party, ~~may the court shall~~ stay all proceedings in the case and order the custodian or appropriate party to prepare a special report to the court prior to defendants being required to answer. The special report will order corrections officials or the appropriate party to undertake a review of the subject matter of the petition in order to provide the court with additional information for the processing of the claim of the prisoner, to ascertain the facts and circumstances, to consider whether any action can and should be taken by the institution or other appropriate officials to resolve the subject matter of the petition and to determine whether other like matters, whether pending in this court or elsewhere, are related to this matter and should be taken up and considered together. All reports made in the course of the review shall be attached to and filed with the special report, and a date the special report is due to the court shall be set. All pending motions are stricken without prejudice to their being reasserted after the special report is filed. All discovery under the Oklahoma Rules of Civil Procedure is stayed until the special report has been filed and any dispositive motions based on the special report are ruled upon. A copy of the special report shall be sent to the respective parties by the agency or person preparing the special report. Upon receipt of the special report, dispositive motions may be filed by the parties and the district court may properly dismiss the petition as being frivolous or malicious or for failure to state a claim, may grant summary judgment or order that the case may proceed under the Oklahoma Rules of Civil Procedure.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 566.5 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. Claims in the form of a lien from an inmate or from a former inmate which arise from the prosecution, incarceration, or supervision of the inmate shall not be accepted by any county clerk, court clerk, county treasurer, or any official of this state having the authority to accept and file liens against persons or property in this state, unless the claim or lien is accompanied by a valid order from a court of competent jurisdiction.

B. Any lien filed by an inmate or on behalf of an inmate which arises from the prosecution, incarceration, or supervision of the inmate shall be void upon the filing of an affidavit that the lien arose out of an inmate claim or a claim on behalf of an inmate, unless the claim or lien is accompanied by a valid order from a court of competent jurisdiction.

SECTION 4. REPEALER Section 18 of Enrolled Senate Bill No. 1397 of the 2nd Session of the 49th Oklahoma Legislature, is hereby repealed.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 24th day of May, 2004.

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Presiding Officer of the House  
of Representatives

Passed the Senate the 19th day of May, 2004.

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Presiding Officer of the Senate