

EHB 2966

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THE STATE SENATE
Monday, April 3, 2006

ENGROSSED

House Bill No. 2966

ENGROSSED HOUSE BILL NO. 2966 - By: SULLIVAN, NANCE, DUNCAN, INGMIRE, ROAN, COOKSEY, DePUE, MARTIN, ROUSSELOT, TERRILL, WALKER and WORTHEN of the House and BASS of the Senate.

An Act relating to prisons and reformatories; amending 57 O.S. 2001, Sections 564, as amended by Section 4, Chapter 159, O.S.L. 2005, 566, as last amended by Section 1, Chapter 382, O.S.L. 2004 Section 10, Chapter 402, O.S.L. 2002, as amended by Section 12, Chapter 168, O.S.L. 2004, Section 11, Chapter 402, O.S.L. 2002, as amended by Section 2, Chapter 382, O.S.L. 2004 and Section 13, Chapter 168, O.S.L. 2004, as amended by Section 6, Chapter 159, O.S.L. 2005 (57 O.S. Supp. 2005, Sections 564, 566, 566.3, 566.4 and 566.5), which relate to inmate lawsuits; modifying standing and procedures; defining term; and providing an effective date.

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

SECTION 1. AMENDATORY 57 O.S. 2001, Section 564, as amended by Section 4, Chapter 159, O.S.L. 2005 (57 O.S. Supp. 2005, Section 564), is amended to read as follows:

Section 564. An inmate in the custody of the Department of Corrections shall completely exhaust all available administrative remedies on all potential claims against the state, any governmental entity, the Department of Corrections, a private company providing services to the Department of Corrections, or an employee of the state ~~or~~, any governmental entity, the Department of Corrections, or a private company providing services to the Department of

1 Corrections prior to initiating an action in district court ~~against~~
2 ~~the Department.~~ Upon release from custody an inmate shall be barred
3 from bringing any action for a claim arising during custody or
4 incarceration in which the inmate has failed to exhaust all
5 administrative remedies.

6 SECTION 2. AMENDATORY 57 O.S. 2001, Section 566, as last
7 amended by Section 1, Chapter 382, O.S.L. 2004 (57 O.S. Supp. 2005,
8 Section 566), is amended to read as follows:

9 Section 566. A. Any action by an inmate initiated against any
10 person, party or entity, the state, the Department of Corrections,
11 an entity contracting with the Department of Corrections to provide
12 correctional services, another state agency, or political
13 subdivision, or an original action in an appellate court, or an
14 appeal of an action whether or not the plaintiff was represented in
15 the district court, may be:

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

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

23 B. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

12 SECTION 3. AMENDATORY Section 10, Chapter 402, O.S.L.
13 2002, as amended by Section 12, Chapter 168, O.S.L. 2004 (57 O.S.
14 Supp. 2005, Section 566.3), is amended to read as follows:

15 Section 566.3 A. 1. If an applicant for in forma pauperis is
16 a prisoner and the prisoner brings an action of any kind, upon
17 filing, the court shall order the prisoner to pay, as a partial
18 payment of any court costs required by law, before the commencement
19 of the action, a first-time payment of twenty percent (20%) of the
20 deposits of the preceding six (6) months to the trust account of the
21 prisoner administered by the confining agency and thereafter monthly
22 payments of twenty percent (20%) of the deposits of the preceding
23 month to the account, but only if the prisoner does not have enough

1 funds to pay the total costs required by law at the time of filing.
2 In those cases where the prisoner has sufficient funds available,
3 the prisoner shall be ordered to pay the required costs before the
4 action may commence. The confining agency shall withdraw monies
5 maintained in the trust account for payment of court fees and shall
6 forward the monies collected at any time the monies exceed Ten
7 Dollars (\$10.00) to the appropriate court clerk, or clerks if
8 multiple courts are involved, until the actual court costs are paid
9 in full. If the prisoner is discharged before payment in full, the
10 court clerk shall be notified of the reported forwarding address and
11 date of discharge of the prisoner. The prisoner must file a
12 certified copy of the trust account records of the prisoner with the
13 court that reflects the balance and activity of the previous six (6)
14 months at the time the petition is filed. If the prisoner is on
15 probation or parole, the prisoner will file certified copies of bank
16 or savings statements of the account and income receipts for the
17 prior six (6) months.

18 2. Nothing in this section prevents a prisoner from authorizing
19 payment beyond that required by law or the Department of Corrections
20 or political subdivision from forwarding payment beyond that
21 required by law if the prisoner has the funds available.

22 3. The court may dismiss any civil action in which the prisoner
23 has failed to pay fees and costs assessed by the court and it is

1 determined the prisoner has funds available and did not pay the
2 required fees and costs.

3 4. If a prisoner is found to be indigent and totally without
4 any funds pursuant to this section at the time of filing, the case
5 may proceed without prepayment of fees or partial fees. Even in
6 those cases where the court finds the prisoner is without funds, the
7 court shall assess costs against the prisoner, establish a payment
8 schedule and order the costs paid when the prisoner has funds.

9 B. 1. An affidavit of inability to pay containing complete
10 information as to the identity of the prisoner, prisoner
11 identification number, nature and amount of income, income of the
12 spouse of the prisoner, property owned, cash or checking accounts,
13 dependents, debts and monthly expenses shall be filed with the
14 court. In addition to the information required above, the affidavit
15 shall contain the following statements: "I am unable to pay the
16 court costs at this time. I verify that the statements made in this
17 affidavit are true and correct." The affidavit shall be sworn as
18 required by law.

19 2. The Attorney General or other counsel for the defendant
20 shall be authorized to receive information from any source verifying
21 the financial information given by the prisoner.

1 3. When considering the ability of a prisoner to pay fees and
2 costs and establishing a payment schedule, the court shall consider,
3 but is not limited to consideration of, the following:

- 4 a. all living support received by the person from any
- 5 source, including the state, whether in money or any
- 6 form of services,
- 7 b. any income of a spouse,
- 8 c. gifts,
- 9 d. savings accounts,
- 10 e. retirement plans,
- 11 f. trust accounts,
- 12 g. personal property,
- 13 h. inmate trust accounts, and
- 14 i. any dispositions of property, real or personal, in the
- 15 past twelve (12) months.

16 C. A court, in which an affidavit of inability to pay has been
17 filed, shall dismiss the action in whole or in part upon a finding
18 that the allegation of poverty is false. If a portion of the action
19 is dismissed, the court shall also designate the issues and
20 defendants on which the action is to proceed without prepaying
21 costs. This order is not subject to an interlocutory appeal.

1 D. In determining whether the allegation of poverty is false,
2 the court is authorized to hold a hearing, before or after service
3 of process, on its own motion or upon the motion of a party.

4 E. If the court concludes, based on information contained in
5 the affidavit of inability to pay or other information available to
6 the court, that the prisoner is able to prepay part of the fees or
7 costs required, then the court shall order a partial payment to be
8 made as a condition precedent to the commencement and further
9 prosecution of the action.

10 F. Notwithstanding any filing fee, or any portion thereof, that
11 may have been paid, the court shall dismiss the case at any time if
12 the court determines that:

- 13 1. The allegation of poverty is untrue; or
- 14 2. The action or appeal:
 - 15 a. is frivolous or malicious,
 - 16 b. fails to state a claim on which relief may be granted,
 - 17 or
 - 18 c. seeks monetary relief against a defendant who is
 - 19 immune from such relief.

20 G. 1. The Department of Corrections and each sheriff is hereby
21 authorized to adopt a grievance procedure at its institutions for
22 receiving and disposing of any and all grievances by prisoners
23 against the Department of Corrections or any entity contracting with

1 the Department of Corrections to provide correctional services, or
2 any officials or employees ~~thereof~~ of either the Department or
3 correctional services contractor or a sheriff, deputies of the
4 sheriff or employees of the county, which arise while a prisoner is
5 within the custody or under the supervision of the Department or
6 sheriff. The grievances may include, but are not limited to, any
7 and all claims seeking monetary damages or any other form of relief
8 otherwise authorized by law. All such grievance procedures,
9 including the prisoner disciplinary process, shall be deemed to be
10 the exclusive internal administrative remedy for complaints and
11 grievances.

12 2. No court of the State of Oklahoma shall entertain a
13 grievance, petition, or complaint of a prisoner unless and until the
14 prisoner has exhausted all the remedies as provided in the grievance
15 procedure of the Director of the Department of Corrections or
16 sheriff. Nothing in this section shall modify requirements of The
17 Governmental Tort Claims Act.

18 3. Failure to timely institute administrative review of a claim
19 shall be considered an abandonment, and upon motion of the
20 defendants, supported by an affidavit of the defendant that the
21 prisoner has failed to timely institute and exhaust the
22 administrative remedy, the court shall enter a judgment of dismissal
23 with prejudice in that cause of action. Strict adherence to the

1 notice requirement established in the grievance procedures shall be
2 complied with by the prisoner or the attorney of the prisoner.

3 4. In addition to any other provisions of law providing for the
4 confidentiality of records of the Department of Corrections or a
5 sheriff, all reports, investigations, and like supporting documents
6 prepared by the Department or sheriff for purposes of responding to
7 the request of a prisoner for an administrative remedy shall be
8 deemed to be prepared in anticipation of litigation and are
9 confidential and not subject to discovery by the prisoner in any
10 civil action or subject to release under the Oklahoma Open Records
11 Act. All formal written responses to the grievance of the prisoner
12 shall be furnished to the prisoner as provided for in the grievance
13 procedure.

14 5. Any prisoner who is allegedly aggrieved by an adverse
15 decision by the Department of Corrections or a sheriff rendered
16 pursuant to any grievance procedure must file the appropriate civil
17 cause of action or application for extraordinary writ, within one
18 hundred eighty (180) days after the final decision is issued and
19 within the limitations period set forth in The Governmental Tort
20 Claims Act, to the appropriate court alleging specifically what
21 legal right was violated and what remedy exists.

22 H. Nothing in this section shall be construed as waiving the
23 sovereign immunity or the tort immunity of the state, its agencies,

1 officers or employees for injuries allegedly suffered while in the
2 custody of the state and its agency or any county, sheriff, or
3 officers or employees of the county for injuries allegedly suffered
4 while in the custody of the county.

5 I. "Prisoner" as used herein shall include but not be limited
6 to a person in custody or whose claims arose during custody.

7 SECTION 4. AMENDATORY Section 11, Chapter 402, O.S.L.
8 2002, as amended by Section 2, Chapter 382, O.S.L. 2004 (57 O.S.
9 Supp. 2005, Section 566.4), is amended to read as follows:

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

15 B. 1. Neither the state, any of its agencies or boards, the
16 Department of Corrections, any county jail, city jail, private
17 correctional company, nor their members, agents, servants or
18 employees shall be liable for any form of civil claim or action
19 alleged to have arisen from any theory of contract law. No arrest
20 or conviction resulting in detention or incarceration shall create
21 any contractual obligation, either actual, implied or at common law,
22 between the prisoner and the state, any of its agencies or boards,
23 the Department of Corrections, any county jail, city jail nor their

1 members, agents, servants or employees. No policy or internal
2 management procedure issued for the management of the prison or jail
3 shall constitute any contractual relationship or obligation between
4 the state, agency, board, commission, prison, jail, or any of its
5 officers, members, servants or employees, and the prisoner or any
6 visitor to the prison or jail.

7 2. No tort action or civil claim may be filed against any
8 employee, agent, or servant of the state, the Department of
9 Corrections, private correctional company, or any county jail or any
10 city jail alleging acts related to the duties of the employee, agent
11 or servant, until all of the notice provisions of the Governmental
12 Tort Claims Act have been fully complied with by the claimant. This
13 requirement shall apply to any claim against an employee of the
14 state, the Department of Corrections, or any county jail or city
15 jail in either their official or individual capacity, and to any
16 claim against a private correctional contractor and its employees
17 for actions taken pursuant to or in connection with a governmental
18 contract.

19 C. No civil action of any type may be brought seeking an
20 injunction or temporary restraining order against any city, county
21 or state agency, or any officer or employee thereof, brought by a
22 plaintiff who is currently incarcerated in any jail, state prison or
23 private prison in the state if the claim alleges matters arising

1 from the incarceration of the plaintiff and related to management of
2 the prison, including but not limited to, prison transfers, cell
3 assignments, prison job or work assignments and disciplinary action.

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

12 E. No prisoner of any city or county jail or of any state,
13 federal or private prison in Oklahoma or any person on parole or
14 probation may obtain any public records maintained by any government
15 entity and pertaining in any manner to any public employee, officer
16 or to any citizen, or any criminal history record of any convicted
17 felon. No prisoner, probationer or parolee may obtain without
18 prepayment of the required fees and costs any other public record
19 subject to release. The Director of the Department of Corrections
20 shall promulgate a rule for the release of criminal history records
21 available to the public which shall include the requirement that
22 requests for criminal history records include the name of the person
23 whose record is being requested and shall charge Fifteen Dollars

1 (\$15.00) for each completed request responded to in any form of
2 written communication by the Department.

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

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

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

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

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

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

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

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

22 K. Upon motion of the defendant or the court for a special
23 report in any civil action filed by a prisoner or former prisoner or

1 attorney of the prisoner against any party, the court shall stay all
2 proceedings in the case and order the custodian or appropriate party
3 to prepare a special report to the court prior to defendants being
4 required to answer. The special report will order corrections
5 officials or the appropriate party to undertake a review of the
6 subject matter of the petition in order to provide the court with
7 additional information for the processing of the claim of the
8 prisoner, to ascertain the facts and circumstances, to consider
9 whether any action can and should be taken by the institution or
10 other appropriate officials to resolve the subject matter of the
11 petition and to determine whether other like matters, whether
12 pending in this court or elsewhere, are related to this matter and
13 should be taken up and considered together. All reports made in the
14 course of the review shall be attached to and filed with the special
15 report, and a date the special report is due to the court shall be
16 set. All pending motions are stricken without prejudice to their
17 being reasserted after the special report is filed. All discovery
18 under the Oklahoma Rules of Civil Procedure is stayed until the
19 special report has been filed and any dispositive motions based on
20 the special report are ruled upon. A copy of the special report
21 shall be sent to the respective parties by the agency or person
22 preparing the special report. Upon receipt of the special report,
23 dispositive motions may be filed by the parties and the district

1 court may properly dismiss the petition as being frivolous or
2 malicious or for failure to state a claim, may grant summary
3 judgment or order that the case may proceed under the Oklahoma Rules
4 of Civil Procedure.

5 SECTION 5. AMENDATORY Section 13, Chapter 168, O.S.L.
6 2004, as amended by Section 6, Chapter 159, O.S.L. 2005 (57 O.S.
7 Supp. 2005, Section 566.5), is amended to read as follows:

8 Section 566.5 In any legal proceeding filed by an inmate, full
9 and complete exhaustion of all administrative and statutory remedies
10 on all potential claims against the state, the Department of
11 Corrections, private entities contracting to provide correctional
12 services, or an employee of the state or the Department of
13 Corrections is a jurisdictional requirement and must be completed
14 prior to the filing of any pleadings.

15 SECTION 6. This act shall become effective November 1, 2006.

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-28-06 - DO
17 PASS.