

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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SENATE BILL 135

Short Title: Eliminate Frivolous Lawsuits.

(Public)

Sponsors: Senators Perdue; and Allran.

Referred to: Courts.

February 15, 1994

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A PROCEDURE FOR ELIMINATING FRIVOLOUS
LAWSUITS BY PRISONERS AND TO ESTABLISH A PARTIAL FILING FEE
FOR PRISONERS PROCEEDING AS INDIGENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-110 reads as rewritten:

"§ 1-110. Suit as an indigent; ~~counsel~~-counsel; suits by prison inmates.

(a) Subject to the provisions of subsection (b) of this section with respect to prison inmates, any Any superior or district court judge or clerk of the superior court may authorize a person to sue as an indigent in their respective courts when the person makes affidavit that he or she is unable to advance the required court costs. The clerk of superior court shall authorize a person to sue as an indigent if the person makes the required affidavit and meets one or more of the following criteria:

- (1) Receives food stamps.
- (2) Receives Aid to Families with Dependent Children (AFDC).
- (3) Receives Supplemental Security Income (SSI).
- (4) Is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons.
- (5) Is represented by private counsel working on the behalf of or under the auspices of a legal services organization under subdivision (4) of this section.

A superior or district court judge or clerk of superior court may authorize a person who does not meet one or more of these criteria to sue as an indigent if the person is unable to advance the required court costs. The court to which the summons is

1 returnable may dismiss the case and charge the court costs to the person suing as an
2 indigent if the allegations contained in the affidavit are determined to be untrue or if the
3 court is satisfied that the action is frivolous or malicious.

4 (b) Whenever a motion to proceed as an indigent is filed pro se by an inmate in
5 the custody of the Department of Correction, the motion to proceed as an indigent and
6 the proposed complaint shall be presented to any superior court judge of the judicial
7 district, who shall determine whether the complaint is frivolous. In the discretion of the
8 court, a frivolous case may be dismissed by order. All other cases shall be returned to
9 the clerk for further inquiry into the prisoner's ability to pay a filing fee. The clerk shall
10 request of the Division of Prisons of the Department of Correction a certified copy of
11 the trust fund account of the plaintiff for the six months preceding submission of the
12 complaint. The plaintiff may proceed as an indigent conditioned upon payment of a
13 partial filing fee based upon fifteen percent (15%) of the income received within the six-
14 month period preceding submission of the complaint, subject to adjustment by the court
15 for special circumstances the prisoner may bring to the court's attention. The clerk shall
16 notify the prisoner of the amount of the filing fee required by the court. If the fee is not
17 received within 20 days of that notice, the motion to proceed as an indigent shall be
18 denied and the action closed. If a partial filing fee as set by the court is tendered within
19 20 days, service of process upon the defendant shall issue without further order of the
20 court."

21 Sec. 2. This act is effective upon ratification and applies to actions filed on or
22 after that date.