

FRIVOLOUS LAWSUITS AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Gladwell

AN ACT RELATING TO FEES; REQUIRING INMATES TO PAY THE FULL FEES FOR FILING CIVIL ACTIONS; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**21-7-4.5**, as enacted by Chapter 161, Laws of Utah 1996

**21-7-4.6**, as enacted by Chapter 161, Laws of Utah 1996

**21-7-4.7**, as enacted by Chapter 161, Laws of Utah 1996

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **21-7-4.5** is amended to read:

**21-7-4.5. Effect of filing affidavit -- Procedure for review and collection.**

(1) [~~For purposes of~~] As used in this section, "prisoner" means a person who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing.

(2) (a) Upon receipt of the oath or affirmation filed with any Utah court by a prisoner, the court shall immediately request the institution or facility where the prisoner is incarcerated to provide an account statement detailing all financial activities in the prisoner's trust account for the previous six months or since the time of incarceration, whichever is shorter.

(b) The incarcerating facility shall:

(i) prepare and produce to the court the prisoner's six-month trust account statement, current trust account balance, and aggregate disposable income[~~Aggregate~~]; and

(ii) calculate aggregate disposable income [~~is calculated~~] by totaling all deposits made in the prisoner's trust account during the six-month period and subtracting all funds automatically deducted or otherwise garnished from the account during the same period.

(3) The court shall:

(a) review both the affidavit of impecuniosity and the financial account statement; and

[make an independent determination]

(b) based [on] upon the [information] review, independently determine whether or not the prisoner is financially capable of paying all the regular fees and costs associated with filing the action.

(4) [Where] When the court concludes that the prisoner is unable to pay full fees and costs, the court shall assess [a] an initial partial filing fee equal to 50% of the prisoner's current trust account balance or 10% of the prisoner's six-month aggregate disposable income, whichever is greater.

(5) (a) After payment of the initial partial filing fee, the court shall require the prisoner to make monthly payments of 20% of the preceding month's aggregate disposable income until the regular filing fee associated with the civil action is paid in full.

(b) The agency having custody of the prisoner shall:

(i) garnish the prisoner's account each month; and

(ii) once the collected fees exceed \$10, forward payments to the clerk of the court until the filing fees are paid.

(c) Nothing in this section may be construed to prevent the agency having custody of the prisoner from withdrawing funds from the prisoner's account to pay court-ordered restitution.

(6) Collection of the filing fees continues despite dismissal of the action.

(7) The filing fee collected may not exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action.

Section 2. Section **21-7-4.6** is amended to read:

**21-7-4.6. Notice of filing fee -- Consequence of nonpayment.**

(1) [~~Upon any filing fee assessment when~~] When an affidavit of impecuniosity has been filed and the court assesses an initial filing fee, the court shall immediately notify the litigant in writing of:

(a) the [~~partial or full~~] initial filing fee required as a prerequisite to proceeding with the action [and];

(b) the procedure available to challenge the initial filing fee assessment as provided in

Section 21-7-4.7~~[-]; and~~

(c) the inmate's ongoing obligation to make monthly payments until the entire filing fee is paid.

(2) The court may not authorize service of process or otherwise proceed with the action, except as provided in Section 21-7-4.7, until the [assessed] initial filing fee~~[, whether partial or full,]~~ has been completely paid to the clerk of the court.

Section 3. Section **21-7-4.7** is amended to read:

**21-7-4.7. Filing fee challenge -- Court powers.**

(1) Within ten days of receiving court notice requiring ~~[a partial or full]~~ an initial filing fee under Section 21-7-4.6, the litigant may contest the fee assessment by filing a memorandum and supporting documentation with the court demonstrating inability to pay the fee.

(2) The court shall review the memorandum and supporting documents challenging the fee assessment for facial validity.

(3) The court may reduce the [assessed] initial filing fee, authorize service of process, or otherwise proceed with the action without prepayment of costs and fees if the memorandum shows the litigant:

- (a) has lost his source of income;
- (b) has unaccounted nondiscretionary expenses limiting his ability to pay;
- (c) will suffer immediate irreparable harm if the action is unnecessarily delayed; or
- (d) will otherwise lose the cause of action by unnecessary delays associated with securing funds necessary to satisfy the assessed filing fee.

(4) Nothing in this section shall be construed to relieve the litigant from the ongoing obligation of monthly payments until the filing fee is paid in full.