

COURT FEES FOR INMATES

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

Senate Sponsor: Jon J. Greiner

LONG TITLE

General Description:

This bill establishes procedures to determine if court fees and costs should be paid in full or waived in whole or in part for a prisoner who files an initial divorce action or an action to obtain custody of the prisoner's children.

Highlighted Provisions:

This bill:

- ▶ requires the court to review the financial information of a prisoner who files an affidavit of impecuniosity;
- ▶ requires courts, constables, and sheriffs to provide equal service to the impecunious; and
- ▶ provides that a judge may order that a judgment or decree not be entered in favor of the prisoner who has been required to pay court costs and fees until those costs and fees are paid in full.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-2-305, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

30 Section 1. Section **78A-2-305** is amended to read:

31 **78A-2-305. Effect of filing affidavit -- Procedure for review and collection.**

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

36 (b) The incarcerating facility shall:

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

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

42 (2) The court shall:

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

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

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

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

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

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

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

57 (c) Nothing in this section may be construed to prevent the agency having custody of

58 the prisoner from withdrawing funds from the prisoner's account to pay court-ordered
59 restitution.

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

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

63 (7) If the prisoner is filing an initial divorce action or an action to obtain custody of
64 the prisoner's children, the following procedures shall apply for review and collection of fees
65 and costs:

66 (a) Upon filing an oath or affirmation with any Utah court by a prisoner, the court
67 shall review the affidavit and make an independent determination based on the information
68 provided whether court costs and fees should be paid in full or be waived in whole or in part.
69 The court shall require a full or partial filing fee when the prisoner's financial information
70 demonstrates an ability to pay the applicable court fees or costs.

71 (b) (i) If a prisoner's court fees or costs are completely waived, and if the prisoner files
72 an appeal, the court shall immediately file any complaint or papers on appeal and complete all
73 necessary action as promptly as if the litigant had paid all the fees and costs in full.

74 (ii) If a prisoner is impecunious, the constable and sheriff shall immediately serve any
75 summonses, writs, process and subpoenas, and papers necessary in the prosecution or defense
76 of the cause as if all the necessary fees and costs had been paid in full.

77 (c) (i) If a prisoner files an affidavit of impecuniosity, the judge shall question the
78 prisoner at the time of the hearing on the merits of the case as to the prisoner's ability to pay.

79 (ii) If the judge determines that the prisoner is reasonably able to pay court fees and
80 costs, the final order or decree shall be entered, however the prisoner may not seek
81 enforcement or modification of the decree or order until the prisoner has paid the fees or costs
82 in full.

83 (iii) A judge may waive the restrictions placed on the prisoner in Subsection (7)(c)(ii)
84 upon a showing of good cause.