

ASSEMBLY BILL NO. 467—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

MARCH 28, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning actions involving prisoners. (BDR 2-519)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to prisoners; providing that certain prisoners may not seek a waiver of fees to prosecute or defend a civil action; providing for the dismissal of certain actions and claims brought or maintained by prisoners under certain circumstances; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 12.015 is hereby amended to read as follows:
2 12.015 1. ~~[Any]~~ *Except as otherwise provided in subsection*
3 *7, any* person who desires to prosecute or defend a civil action may
4 file an affidavit with the court setting forth with particularity facts
5 concerning his income, property and other resources which establish
6 that he is unable to prosecute or defend the action because he is
7 unable to pay the costs of so doing. If the judge is satisfied that the
8 person is unable to pay the costs, he shall order:
9 (a) The clerk of the court:
10 (1) To allow the person to commence or defend the action
11 without costs; and
12 (2) To file or issue any necessary writ, process, pleading or
13 paper without charge.



(b) The sheriff or other appropriate public officer within this State to make personal service of any necessary writ, process, pleading or paper without charge.

2. If the person is required to have proceedings reported or recorded, or if the court determines that the reporting, recording or transcription of proceedings would be helpful to the adjudication or appellate review of the case, the court shall order that the reporting, recording or transcription be performed at the expense of the county in which the action is pending but at a reduced rate as set by the county.

3. If the person prevails in the action, the court shall enter its order requiring the losing party to pay into court within 5 days the costs which would have been incurred by the prevailing party, and those costs must then be paid as provided by law.

4. Where the affidavit establishes that the person is unable to defend an action, the running of the time within which to appear and answer or otherwise defend is tolled during the period between the filing of the affidavit and the ruling of the court thereon.

5. An affidavit filed pursuant to this section, and any application or request for an order filed with the affidavit, does not constitute a general appearance before the court by the affiant or give the court personal jurisdiction over him.

6. The order of the court to which application is made pursuant to this section is not appealable.

7. Unless a prisoner is under imminent danger of serious physical injury, a prisoner may not bring a civil action or appeal a judgment in a civil action or proceeding under this section if, on three or more prior occasions, while incarcerated, confined or detained in any facility in this State or any other state:

(a) The prisoner has brought a civil action or appealed a judgment in a civil action or proceeding in a court of this State, a court of any other state or a court of the United States; and

(b) The action or appeal was dismissed on the grounds that the action or appeal was frivolous, malicious or failed to state a claim upon which relief may be granted.

8. As used in this section:

(a) "Facility" includes any place designated by law for the keeping of persons held in custody under process of law or under lawful arrest, including, without limitation:

(1) Any facility operated by the United States Bureau of Prisons;

(2) Any institution or facility of the Department of Corrections or of the state correctional authority in another state; and



1 (3) Any local jail or detention facility in this State or
2 another state.

3 (b) "Prisoner" means any person who is incarcerated,
4 confined or detained in any facility.

5 Sec. 2. Chapter 41 of NRS is hereby amended by adding
6 thereto a new section to read as follows:

7 1. The court shall, on its own motion or on the motion of a
8 party, dismiss any action brought or maintained by a prisoner
9 pursuant to state or federal law or brought or maintained by a
10 prisoner with respect to conditions of confinement if the court is
11 satisfied that the action:

12 (a) Is frivolous;

13 (b) Is malicious;

14 (c) Fails to state a claim upon which relief may be granted; or

15 (d) Seeks monetary relief from a defendant who is immune
16 from such relief.

17 2. As used in this section:

18 (a) "Conditions of confinement" includes, but is not limited to,
19 a prisoner's access to the law library, privileges regarding
20 visitation and the use of the telephone, the type of meals provided
21 to the prisoner, and the provision of medical care in situations that
22 are not emergencies.

23 (b) "Prisoner" means any person who is incarcerated,
24 confined or detained in any institution or facility of the
25 Department of Corrections, any local jail or detention facility or
26 any other state or local correctional or detention facility located in
27 this State.

28 Sec. 3. NRS 41.0322 is hereby amended to read as follows:

29 41.0322 1. A person who is or was in the custody of the
30 Department of Corrections may not proceed with any action against
31 the Department or any of its agents, former officers, employees or
32 contractors to recover compensation for the loss of his personal
33 property, property damage, personal injuries or any other claim
34 arising out of a tort pursuant to NRS 41.031 unless the person has
35 exhausted his administrative remedies provided by NRS 209.243
36 and the regulations adopted pursuant thereto.

37 2. The filing of an administrative claim pursuant to NRS
38 209.243 is not a condition precedent to the filing of an action
39 pursuant to NRS 41.031.

40 3. ~~[And]~~ Except as otherwise provided in this subsection, an
41 action filed by a person in accordance with this section before the
42 exhaustion of his administrative remedies must be stayed by the
43 court in which the action is filed until the administrative remedies
44 are exhausted. The court ~~[shall]~~ :



1 ***(a) Shall*** dismiss the action if the person has not timely filed his
2 administrative claim pursuant to NRS 209.243.

3 ***(b) May dismiss the action without first requiring the***
4 ***exhaustion of administrative remedies pursuant to NRS 209.243 if***
5 ***the action, on its face:***

6 ***(1) Is frivolous;***

7 ***(2) Is malicious;***

8 ***(3) Fails to state a claim upon which relief may be granted;***

9 ***or***

10 ***(4) Seeks monetary relief from a defendant who is immune***
11 ***from such relief.***

12 4. If a person has exhausted his administrative remedies and
13 has filed and is proceeding with a civil action to recover
14 compensation for the loss of his personal property, property damage,
15 personal injuries or any other claim arising out of a tort, the Office
16 of the Attorney General ~~must~~ ***shall*** initiate and conduct all
17 negotiations for settlement relating to that action.

18 **Sec. 4.** The amendatory provisions of this act apply to an
19 action that is:

20 1. Pending on the effective date of this act; or

21 2. Filed on or after the effective date of this act.

22 **Sec. 5.** This act becomes effective upon passage and approval.

