

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 457

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H.P. 335

House of Representatives, January 23, 1997

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### An Act to Discourage Frivolous Lawsuits by Prisoners.

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative CLUKEY of Houlton.  
Cosponsored by Senator KIEFFER of Aroostook and  
Representatives: AHEARNE of Madawaska, JOY of Crystal, KNEELAND of Easton,  
McALEVEY of Waterboro, O'NEAL of Limestone, STEDMAN of Hartland, WHEELER of  
Bridgewater, WINSOR of Norway.

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Be it enacted by the People of the State of Maine as follows:

Sec. 1. 4 MRSA §1058 is enacted to read:

§1058. Prisoner application to proceed in forma pauperis

1. Prepayment of filing fee and certified copies required.

A person who is confined in a federal, state, county or local correctional or detention facility may not bring a civil action arising under federal or state law in any court in this State with respect to a condition of that person's confinement or the effect of an action or inaction by a government official on the life of that person confined and may not appeal a judgment in such a civil action without prepayment of the filing fee unless, in addition to the in forma pauperis application and affidavit required by the Maine Rules of Civil Procedure, Rule 91, that person submits a certified copy of the facility account statement for that person for the 6-month period immediately preceding the filing of the action or appeal, obtained from the appropriate official of each facility at which that person is or was confined.

2. Waiver of prepayment of filing fee. If the court finds that the action or appeal is not frivolous and has been brought in good faith and that the person is without sufficient funds to pay the filing fee, it shall order that prepayment of the full amount of the filing fee be waived. If the court denies the in forma pauperis application, the action or appeal must be dismissed without prejudice, unless within 7 days after the denial the person pays the filing fee to the clerk of the court.

3. Full payment of filing fee required; initial partial filing fee. Notwithstanding subsection 2, the person shall pay the full amount of the filing fee. The court shall assess the person's financial status and, when funds exist, collect as a partial payment of the filing fee an initial partial filing fee of 20% of the greater of:

A. The average monthly deposits to the person's facility account; or

B. The average monthly balance in the person's facility account for the 6-month period immediately preceding the filing of the action or appeal.

4. Payments from prisoner's facility account. After payment of the initial partial filing fee, the person shall make monthly payments of 20% of the preceding month's deposits credited to the person's facility account. The facility having custody of the person shall forward monthly payments from the account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fee is paid in full.

2           5. Restrictions on filing fee. The filing fee collected  
4           may not exceed the amount of the fee permitted by law for the  
6           commencement of a civil action or an appeal of a civil action. A  
8           person may not be prohibited from bringing a civil action or  
          appealing a civil action if the court finds that the action or  
          appeal is not frivolous and that the person has no assets and no  
          means by which to pay the initial partial filing fee.

10           6. Payment of outstanding restitution orders. Any  
12           compensatory damages awarded to a person in connection with a  
14           civil action brought with respect to a condition of the person's  
16           confinement or the effect of an action or inaction by a  
18           government official on the life of the person confined must be  
20           paid directly to satisfy any outstanding restitution orders  
          pending against the person, whether as the result of court  
          proceedings or facility disciplinary proceedings. The remainder  
          of any such award, after full payment of all pending restitution  
          orders, must be forwarded to the person.

22           7. Notification to victim. Prior to payment of any  
24           compensatory damages awarded to a person in connection with a  
26           civil action brought with respect to a condition of the person's  
28           confinement or the effect of an action or inaction by a  
          government official on the life of the person confined,  
          reasonable efforts must be made to notify the victims of the  
          crime for which the person was confined concerning the pending  
          payment of any such compensatory damages.

## SUMMARY

32           This bill, which is modeled after certain provisions of the  
34           Federal Prison Litigation Reform Act of 1995, discourages  
36           frivolous litigation by prisoners, including, but not limited to,  
38           civil rights suits, tort claims and petitions for judicial review  
40           of final agency action, by striking the current system of waiver  
42           of the court filing fee for a prisoner proceeding in forma  
44           pauperis and enacting a system of waiver of prepayment of the  
          filing fee. This bill requires a prisoner, as funds are  
          available, to pay the filing fee in installments until it is  
          fully paid. It also requires that damages awarded as a result of  
          prisoner litigation be applied first to the payment of any  
          outstanding restitution orders and that the victims be notified  
          of the impending payment of such damages.