

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 164

(By Senators Tucker, Yost, Barnes, Plymale and Wills)

[Originating in the Committee on the Judiciary;
reported February 10, 2012.]

A BILL to amend and reenact §25-1A-4 and §25-1A-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §25-1A-6a, all relating to sanctions imposed against prisoners for filing frivolous or malicious litigation and unmerited administrative complaints; and sanctions imposed against prisoners for filing certain frivolous litigation against licensed professionals providing services to the state and inmate population.

Be it enacted by the Legislature of West Virginia:

That §25-1A-4 and §25-1A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code

be amended by adding thereto a new section, designated §25-1A-6a, all to read as follows:

ARTICLE 1A. WEST VIRGINIA PRISONER LITIGATION REFORM ACT.

§25-1A-4. Judicial review of initial pleading; dismissal.

1 (a) The court shall, prior to issuance of process, review
2 the complaint, petition or other initial pleading to determine
3 whether a civil action is frivolous or malicious as defined in
4 subsection (b) of this section and fails to state a claim for
5 which relief can be granted or seeks monetary relief from a
6 party who is immune from such relief. If the complaint,
7 petition or other initial pleading is frivolous or malicious,
8 fails to state a claim for which relief can be granted or seeks
9 monetary relief from a party who is immune from such relief,
10 the court shall not issue process and shall dismiss the case.

11 (b) A civil action is frivolous or malicious if it:

12 (1) Has no arguable basis in fact or law; or

13 (2) Is substantially similar to a previous civil action in
14 which the inmate did not substantially prevail, either in that
15 it is brought against the same parties or in that the civil
16 action arises from the same operative facts of a previous civil
17 action. ~~or~~

18 ~~(3) Has been brought with the intent to harass an~~
19 ~~opposing party~~

§25-1A-6. Sanctions for frivolous, malicious or harassing litigation.

1 (a) Upon a finding by the court that a civil action is
2 frivolous or malicious, ~~or intended to harass the party~~
3 ~~against whom the civil action is brought~~ or that the inmate
4 knowingly testified falsely or otherwise knowingly presented
5 false evidence or information to the court, the court ~~may~~
6 ~~order that the inmate forfeit earned good-time credit. A~~
7 ~~court may take additional evidence to determine the appro-~~
8 ~~priate amount of good-time credit to be forfeited~~ shall enter
9 an order dismissing claims, which order must state the
10 court's reasoning and must set forth the specific factual and
11 legal basis for the court's decision.

12 (b) The court shall forward the findings in the form of an
13 order to the Commissioner of the Division of Corrections or
14 head of such other agency having custody of the prisoner.
15 The Commissioner of the Division of Corrections or other
16 agency head, upon receipt of such order, shall cause the
17 respective warden or administrator of the prisoner's institu-

18 tion, jail or facility to bring administrative disciplinary
19 charges against the inmate.

20 (c) An inmate found to have engaged in the above
21 conduct shall be subject to loss of good time or other admin-
22 istrative sanctions as are imposed for prisoners violating the
23 rules governing prisoner conduct.

**§25-1A-6a. Sanctions for filing unmerited administrative com-
plaints against licensed professionals providing
services to the State of West Virginia or to the
inmate population.**

1 (a) Upon a finding by any disciplinary authority that a
2 complaint filed by a prisoner against a licensed provider of
3 professional services to the state or to a prisoner is frivolous
4 or malicious as defined in section four of this article, or that
5 the inmate knowingly testified falsely or otherwise know-
6 ingly presented false evidence or information to the disci-
7 plinary authority, that authority shall make a written report
8 dismissing claims, which report must state the authority's
9 reasoning and must set forth the specific basis for its deci-
10 sion.

11 (b) The authority shall forward the written report to the
12 Commissioner of the Division of Corrections or head of such

13 other agency having custody of the prisoner. The Commis-
14 sioner of the Division of Corrections or other agency head,
15 upon receipt of such written report, shall cause the respec-
16 tive warden or administrator of the prisoner's institution, jail
17 or facility to bring administrative disciplinary charges
18 against the inmate.

19 (c) An inmate found to have engaged in the above
20 conduct shall be subject to loss of good time or other admin-
21 istrative sanctions as are imposed for prisoners violating the
22 rules governing prisoner conduct.

23 (d) For purposes of this section the term "licensed
24 professional" means any individual possessing a license to
25 engage in a profession, or any other form of administrative
26 certification or approval to engage in an occupation which is
27 subject to revocation for misconduct. "Prisoner" means any
28 person committed to a jail or prison to serve a sentence of
29 incarceration for the violation of criminal laws of this state.