

SENATE BILL NO. 1248

September 15, 1998, Introduced by Senators BENNETT and GOUGEON and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9948) by adding sections 2965 and 2966.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2965. (1) AS USED IN THIS SECTION AND SECTION 2966:

2 (A) "CLAIM OF INDIGENCY" MEANS AN ALLEGATION BY A PLAINTIFF,
3 BY AFFIDAVIT OR OTHERWISE, THAT HE OR SHE IS UNABLE BECAUSE OF
4 INDIGENCY TO PAY FILING FEES AND COSTS.

5 (B) "STATE CORRECTIONAL FACILITY" MEANS A FACILITY HOUSING A
6 PRISONER POPULATION UNDER THE JURISDICTION OF THE DEPARTMENT OF
7 CORRECTIONS AND INCLUDES A YOUTH CORRECTIONAL FACILITY ESTAB-
8 LISHED UNDER SECTION 20G OF 1953 PA 232, MCL 791.220G, REGARDLESS
9 OF WHETHER THE DEPARTMENT OF CORRECTIONS OR A PRIVATE VENDOR
10 OPERATES THE FACILITY.

1 (2) SUBJECT TO SUBSECTION (3), AN ACTION BROUGHT UNDER A
2 CLAIM OF INDIGENCY BY A PRISONER CONFINED IN A STATE CORRECTIONAL
3 FACILITY, SEEKING REDRESS AGAINST AN AGENCY, OFFICER, OR EMPLOYEE
4 OF THIS STATE, SHALL BE DISMISSED BY THE COURT IF ANY OF THE FOL-
5 LOWING APPLY:

6 (A) THE ADMINISTRATIVE REMEDIES AVAILABLE TO THE PRISONER
7 HAVE NOT BEEN FULLY EXHAUSTED.

8 (B) THE PRISONER ON 3 OR MORE PREVIOUS OCCASIONS FILED CIVIL
9 ACTIONS UNDER CLAIMS OF INDIGENCY WHILE HE OR SHE WAS A PRISONER,
10 ALL OF WHICH WERE DISMISSED ON THE GROUNDS THAT THEY WERE FRIVO-
11 LOUS OR FAILED TO STATE A CLAIM UPON WHICH RELIEF MAY BE
12 GRANTED.

13 (C) THE PRISONER IS LIABLE FOR UNPAID COSTS OR FEES ARISING
14 OUT OF ANY PREVIOUS CIVIL ACTION BROUGHT BY HIM OR HER.

15 (3) HOWEVER, THE COURT MAY ALLOW THE FILING OF A CIVIL
16 ACTION THAT WOULD BE BARRED BY SUBSECTION (2) IF THE COURT
17 BELIEVES THAT THE PRISONER IS IN IMMINENT DANGER OF SERIOUS PHYS-
18 ICAL INJURY, AND THE CIVIL ACTION ADDRESSES THAT IMMINENT
19 DANGER.

20 SEC. 2966. (1) IF AN ACTION IS BROUGHT UNDER A CLAIM OF
21 INDIGENCY BY A PRISONER CONFINED IN A STATE CORRECTIONAL FACILI-
22 TY, SEEKING REDRESS AGAINST AN AGENCY, OFFICER, OR EMPLOYEE OF
23 THIS STATE, THE COURT MAY REVIEW THE ACTION ON ITS OWN MOTION AT
24 ANY TIME AFTER THE ACTION IS FILED OR, UPON MOTION OF THE
25 DEFENDANT, SHALL REVIEW THE ACTION TO DETERMINE IF ANY OF THE
26 FOLLOWING APPLY:

1 (A) THE ACTION IS FRIVOLOUS OR MALICIOUS OR FAILS TO STATE A
2 CLAIM UPON WHICH RELIEF MAY BE GRANTED.

3 (B) THE ACTION SEEKS MONETARY RELIEF AGAINST A DEFENDANT
4 THAT HAS CIVIL IMMUNITY FROM LIABILITY FOR THAT CLAIM.

5 (C) THE ALLEGATION OF INDIGENCY BY WHICH THE ACTION WAS
6 BROUGHT IS NOT TRUE.

7 (2) IF THE COURT DETERMINES UNDER SUBSECTION (1) THAT
8 SUBSECTION (1)(A), (B), OR (C) APPLIES TO THE ACTION, THE COURT
9 SHALL DISMISS THE CIVIL ACTION AND ASSESS COSTS AND FEES AGAINST
10 THE PLAINTIFF.