

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 164**

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

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported February 10, 2012.]
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9
10 A BILL to amend and reenact §25-1A-4 and §25-1A-6 of the Code of
11 West Virginia, 1931, as amended; and to amend said code by
12 adding thereto a new section, designated §25-1A-6a, all
13 relating to sanctions imposed against prisoners for filing
14 frivolous or malicious litigation and unmerited administrative
15 complaints; and sanctions imposed against prisoners for filing
16 certain frivolous litigation against licensed professionals
17 providing services to the state and inmate population.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §25-1A-4 and §25-1A-6 of the Code of West Virginia, 1931,
20 as amended, be amended and reenacted; and that said code be amended
21 by adding thereto a new section, designated §25-1A-6a, all to read
22 as follows:

23 **ARTICLE 1A. WEST VIRGINIA PRISONER LITIGATION REFORM ACT.**

24 **§25-1A-4. Judicial review of initial pleading; dismissal.**

25 (a) The court shall, prior to issuance of process, review the

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

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

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

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

16 ~~(3) Has been brought with the intent to harass an opposing~~
17 ~~party~~

18 **§25-1A-6. Sanctions for frivolous, malicious or harassing**
19 **litigation.**

20 (a) Upon a finding by the court that a civil action is
21 frivolous or malicious, ~~or intended to harass the party against~~
22 ~~whom the civil action is brought~~ or that the inmate knowingly
23 testified falsely or otherwise knowingly presented false evidence
24 or information to the court, the court ~~may order that the inmate~~
25 ~~forfeit earned good-time credit. A court may take additional~~
26 ~~evidence to determine the appropriate amount of good-time credit to~~

1 ~~be forfeited~~ shall enter an order dismissing claims, which order
2 must state the court's reasoning and must set forth the specific
3 factual and legal basis for the court's decision.

4 (b) The court shall forward the findings in the form of an
5 order to the Commissioner of the Division of Corrections or head of
6 such other agency having custody of the prisoner. The Commissioner
7 of the Division of Corrections or other agency head, upon receipt
8 of such order, shall cause the respective warden or administrator
9 of the prisoner's institution, jail or facility to bring
10 administrative disciplinary charges against the inmate.

11 (c) An inmate found to have engaged in the above conduct shall
12 be subject to loss of good time or other administrative sanctions
13 as are imposed for prisoners violating the rules governing prisoner
14 conduct.

15 **§25-1A-6a. Sanctions for filing unmerited administrative**
16 **complaints against licensed professionals**
17 **providing services to the State of West Virginia**
18 **or to the inmate population.**

19 (a) Upon a finding by any disciplinary authority that a
20 complaint filed by a prisoner against a licensed provider of
21 professional services to the state or to a prisoner is frivolous or
22 malicious as defined in section four of this article, or that the
23 inmate knowingly testified falsely or otherwise knowingly presented
24 false evidence or information to the disciplinary authority, that
25 authority shall make a written report dismissing claims, which

1 report must state the authority's reasoning and must set forth the
2 specific basis for its decision.

3 (b) The authority shall forward the written report to the
4 Commissioner of the Division of Corrections or head of such other
5 agency having custody of the prisoner. The Commissioner of the
6 Division of Corrections or other agency head, upon receipt of such
7 written report, shall cause the respective warden or administrator
8 of the prisoner's institution, jail or facility to bring
9 administrative disciplinary charges against the inmate.

10 (c) An inmate found to have engaged in the above conduct shall
11 be subject to loss of good time or other administrative sanctions
12 as are imposed for prisoners violating the rules governing prisoner
13 conduct.

14 (d) For purposes of this section the term "licensed
15 professional" means any individual possessing a license to engage
16 in a profession, or any other form of administrative certification
17 or approval to engage in an occupation which is subject to
18 revocation for misconduct. "Prisoner" means any person committed
19 to a jail or prison to serve a sentence of incarceration for the
20 violation of criminal laws of this state.