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**HOUSE BILL NO. 547****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice  
on February 8, 2002)

(Patron Prior to Substitute— Delegate Kilgore)

A *BILL* to amend the Code of Virginia by adding in Title 8.01 a chapter numbered 27, consisting of sections numbered 8.01-689 through 8.01-700, and to repeal § 8.01-243.2 of the Code of Virginia, relating to limiting civil law suits by prisoners.

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Title 8.01 a chapter numbered 27, consisting of sections numbered 8.01-689 through 8.01-700, as follows:**

**CHAPTER 27.****VIRGINIA PRISONER LITIGATION REFORM ACT.**

§ 8.01-689. Short title.

*This chapter shall be known and may be cited as the "Virginia Prisoner Litigation Reform Act."*

§ 8.01-690. Definitions.

*As used in this chapter:*

"Action" means any civil lawsuit initiated by a prisoner *pro se* in any state circuit or general district court, including petitions for writs of mandamus or injunctive or declaratory relief. An action brought by a prisoner represented by counsel is excluded from this chapter; however, the provisions of §§ 8.01-698 and 8.01-699 shall apply.

"Agency" means any department, institution, authority, instrumentality, board or other administrative agency of the Commonwealth.

"Appeal" means any appeal taken from any adverse decision by any court of the Commonwealth.

"Attorney's fees" means any fees assessed by any court of the Commonwealth to reimburse counsel or the agency for defending any action; it also includes sanctions awarded under § 8.01-271.1 or any other statute.

"Costs" means any filing fees, costs, writ taxes, bonds, service of process fees, or any other cost or fee associated with filing, maintaining, or appealing any action in any state circuit or general district court.

"Department" means the Virginia Department of Corrections.

"Employee" means any officer, employee or agent of any agency, or any person acting on behalf of an agency in an official capacity, temporarily or permanently in the service of the Commonwealth.

"Filing" means to file with the clerk of the court; it does not mean to place in the prison mail system.

"Inmate account" means any checking, savings or financial account maintained in the prisoner's name or on his behalf in any banking or financial institution, within or without the Commonwealth, and any inmate trust account maintained by the Department.

"Prison" means any federal, or state or local correctional facility, including those owned or operated by the Virginia Department of Corrections, or operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.).

"Prisoner" means any person confined in a prison.

"Transport costs" means the costs and fees incurred to bring the prisoner and any prisoner witnesses to and from court for any hearing.

§ 8.01-691. Filing of civil actions by prisoners; payment of fees and costs; request for in forma pauperis status; when actions deemed filed; what to be filed; nonsuits.

No prisoner action shall be deemed filed without prepayment in full of all costs, unless in forma pauperis status is granted by the court. A prisoner may submit his action to the clerk accompanied by a request for in forma pauperis status, together with a certified copy of his inmate account showing all deposits and disbursements for the previous twelve months. The court shall promptly rule upon the prisoner's request for in forma pauperis status. The grant of in forma pauperis status shall not relieve the prisoner from the full payment of costs, but shall permit him to make payment in equal installments as directed by the court. If in forma pauperis status is denied, the court shall require the prisoner to pay the costs in full within thirty days and shall stay the case until the costs are paid in full. Any action in which in forma pauperis status is granted shall be deemed filed retroactively to the date on which the papers were received by the court. If a prisoner fails to pay the full costs or make any installment payment when due, the court shall dismiss the case without prejudice for want of prosecution. No prisoner shall be permitted to file a warrant in debt, warrant in detinue or other such pleading; all actions shall be commenced by the filing of a written motion for judgment clearly and plainly setting

60 forth the prisoner's claims, accompanied by all supporting documentation.

61 § 8.01-692. When in forma pauperis status denied.

62 In forma pauperis status shall be denied to any prisoner who has had three or more cases or  
63 appeals dismissed by any federal or state court for being frivolous, malicious, or for failure to state a  
64 claim, absent a showing that the prisoner is in imminent danger of serious physical injury at the time of  
65 filing his motion for judgment.

66 § 8.01-693. Venue of prisoner actions.

67 Notwithstanding any other provision of law, no prisoner action shall be filed except in the city or  
68 county in which the prison is located where the prisoner was housed when his cause of action arose.  
69 Upon motion of the defendant or the court sua sponte, the court shall transfer the case to the proper  
70 venue.

71 § 8.01-694. Service of process; notice of nonrepresentation; time for response; requirement for  
72 further service.

73 Upon payment of the full costs or the grant of in forma pauperis status, the court shall effect service  
74 of process by issuing an order to the Office of the Attorney General requiring responsive pleadings to  
75 be filed in no fewer than thirty days of receipt of the order; the order shall be accompanied by a copy  
76 of all papers filed by the prisoner. When responsive pleadings are filed, the Office of the Attorney  
77 General shall advise the court of those defendants for whom it cannot accept service of process. The  
78 court shall direct the prisoner to effect service upon the nonrepresented parties within sixty days; if  
79 service is not effected within sixty days, such parties shall be dismissed from the case. No trial, hearing  
80 or return date shall be set by the court until the provisions of § 8.01-695 have been followed.

81 § 8.01-695. When hearings held; transport costs; limitation on prisoner witnesses; limitation on  
82 subpoenas; telephonic and video hearings.

83 Oral argument on any motion in a prisoner action shall be heard only at the request of the court;  
84 whenever possible, the court shall rule upon the record before it without holding a hearing. The court  
85 may in its discretion hold any hearing consistent with § 17.1-513.2 and § 16.1-93.1, rather than conduct  
86 a hearing in court. No order for the transportation of the prisoner or his witnesses shall issue unless  
87 the prisoner prepays in full the transport costs for himself and any prisoner witnesses. Absent  
88 extraordinary circumstances, no prisoner shall be permitted to request attendance of more than two  
89 prisoner witnesses at any hearing; such witnesses shall be permitted only upon a showing that their  
90 anticipated testimony is germane, relevant and material. If the prisoner fails to pay the transport costs  
91 in full within thirty days after being ordered to do so, the hearing shall be cancelled. The court may  
92 then give the prisoner the option of having the hearing held via telephonic or videoconferencing devices  
93 or continued until the prisoner is released from prison; the costs for such hearing shall be assessed as  
94 costs at the end of the case. No prisoner shall be permitted to issue subpoenas for nonprisoner  
95 witnesses or for documents, or make any discovery requests, until the court has ruled upon any plea,  
96 demurrer or motion to dismiss in the case.

97 § 8.01-696. Discovery; subpoenas; in camera submissions; privacy and security considerations.

98 Once the court has ruled upon all preliminary and dispositive motions in the case, the court shall  
99 permit limited discovery only upon a showing of actual need. The court shall screen the prisoner's  
100 discovery requests and subpoena requests and require the defendants to respond only to those that are  
101 germane, relevant and material. In no event shall the defendants be required to respond to more than  
102 five interrogatories, five requests for admissions or five requests for production of documents, absent a  
103 showing of good cause. In no event shall a prisoner be entitled to disclosure of:

- 104 1. Department, Division or Institutional Operating Procedures dealing with security matters;
- 105 2. Any personal information of employees;
- 106 3. The prisoner's or any other prisoner's central criminal file or parole file;
- 107 4. Records of the Division of Forensic Science;
- 108 5. Records of the Virginia State Police;
- 109 6. Records of the Virginia Parole Board; or
- 110 7. Any other privileged or confidential records.

111 In appropriate circumstances, such material may be submitted to the court for its in camera review  
112 and shall be held by the court under seal. At the conclusion of the case, such material shall be returned  
113 to the counsel who submitted it. If an appeal is taken, the appellate court shall hold such material under  
114 seal and return it to the counsel who submitted it at the conclusion of the appeal.

115 § 8.01-697. Recovery by prisoner; offsets.

116 Any damage award shall be offset by all amounts owing as a result of:

- 117 1. Outstanding child or spousal support awards;
- 118 2. Amounts owing for victim restitution;
- 119 3. Amounts owing for criminal fines and costs; and
- 120 4. Amounts awarded by any court for sanctions, attorney's fees, costs or any other reason.

121 § 8.01-698. Exhaustion of remedies.

No prisoner shall be permitted to file or maintain an action unless he has, prior to submitting his civil action, fully and timely exhausted all procedures available to him under the prison grievance system. No prisoner shall be excused from this requirement because he seeks a remedy not available to him under the prison grievance system. If a prisoner fails to exhaust all levels of appeal, or misses the deadline for completing each step of the grievance procedure, he shall be deemed to have failed to exhaust his grievance remedies and his case shall be dismissed with prejudice. No person shall be excused from complying with the provisions of this section due to his release from confinement after his cause of action arose.

§ 8.01-699. Statute of limitations.

Notwithstanding any other provision of law, no prisoner shall bring, or have brought on his behalf, any personal action relating to the conditions of his confinement, including claims of excessive force, until all available administrative remedies are exhausted as required by § 8.01-698. Such action shall be brought by or on behalf of such prisoner within one year after the cause of action accrues, or within six months after all administrative remedies are exhausted, whichever occurs later.

§ 8.01-700. Waiver of privilege.

No prisoner shall have any privilege with regard to his criminal, medical, dental and mental health records that are in the possession of the Commonwealth, any law-enforcement agency, or any health care provider, and all such records may be used in any lawful fashion.

**2. That § 8.01-243.2 of the Code of Virginia is repealed.**