S T A T E O F N E W Y O R K

1059

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. SAYWARD, CALHOUN, KOLB, DUPREY -- Multi-Sponsored by -- M. of A. BURLING, CROUCH, ERRIGO, FITZPATRICK, McDONOUGH, MOLINARO, TOWNSEND -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to appropriation of funds for legal services for inmate lawsuits and to amend the correction law, in relation to the functions, powers and duties of the citizen's policy and complaint review council

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The executive law is amended by adding a new section 837-s to read as follows:

S 837-S. APPROPRIATION FOR LEGAL SERVICES PROVIDERS TO INMATES; PROHIBITIONS. 1. FOR THE PURPOSES OF THIS SECTION THE TERM "LEGAL SERVICES PROVIDER" SHALL MEAN A PRIVATE, NON-PROFIT ORGANIZATION INCORPORATED AND OPERATING EXCLUSIVELY IN NEW YORK STATE, THE PRIMARY FUNCTION AND PURPOSE OF WHICH IS TO PROVIDE LEGAL SERVICES WITHOUT CHARGE TO AN INMATE OR INMATES OF A CORRECTIONAL FACILITY.

2. NO APPROPRIATION OF STATE FUNDS SHALL BE USED FOR LEGAL SERVICES FURNISHED TO AN INMATE OF A CORRECTIONAL FACILITY BY A LEGAL SERVICES PROVIDER AS DEFINED IN SUBDIVISION ONE OF THIS SECTION FOR THE FOLLOWING PURPOSES:

(A) TO INITIATE OR PARTICIPATE IN A CLASS ACTION SUIT WHICH IS DEEMED FRIVOLOUS PURSUANT TO A FINDING OF THE CITIZEN'S POLICY AND COMPLAINT REVIEW COUNCIL AUTHORIZED PURSUANT TO PARAGRAPH ONE-A OF SUBDIVISION (B) OF SECTION FORTY-TWO OF THE CORRECTION LAW;

(B) TO ATTEMPT TO INFLUENCE THE PASSAGE OR DEFEAT OF LEGISLATION, A CONSTITUTIONAL AMENDMENT, A REFERENDUM, AN INITIATIVE, OR SIMILAR PROCEDURE OF CONGRESS, A STATE, OR A LOCAL LEGISLATIVE BODY;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(C) TO ATTEMPT TO INFLUENCE THE ISSUANCE, AMENDMENT, OR REVOCATION OF AN EXECUTIVE ORDER, REGULATION, OR OTHER STATEMENT OF GENERAL APPLICABILITY AND FUTURE EFFECT BY A FEDERAL, STATE OR LOCAL AGENCY;

(D) TO ATTEMPT TO INFLUENCE AN ADJUDICATORY PROCEEDING OF A FEDERAL, STATE OR LOCAL AGENCY IF SUCH PART OF THE PROCEEDING IS DESIGNED FOR THE FORMULATION OR MODIFICATION OF AN AGENCY POLICY OF GENERAL APPLICABILITY AND FUTURE EFFECT; AND

(E) TO ATTEMPT TO ADVOCATE A PARTICULAR PUBLIC POLICY OR ENCOURAGE A POLITICAL ACTIVITY OR A DEMONSTRATION, INCLUDING THE DISSEMINATION OF INFORMATION ABOUT SUCH A POLICY OR ACTIVITY.

S 2. Subdivision (b) of section 42 of the correction law is amended by adding a new paragraph 1-a to read as follows:

1-A. (I) TO REVIEW AND DETERMINE WHETHER A CLASS ACTION SUIT INITIATED BY AN INMATE OR INMATES OF A CORRECTIONAL FACILITY IS FRIVOLOUS, PRIOR TO ITS SUBMISSION TO A LEGAL SERVICES PROVIDER AS DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED THIRTY-SEVEN-S OF THE EXECUTIVE LAW.

(II) IN DETERMINING WHETHER A CLASS ACTION SUIT INITIATED BY AN INMATE OR INMATES OF A CORRECTIONAL FACILITY IS FRIVOLOUS, THE COUNCIL SHALL CONSIDER WHETHER:

(A) THE CLAIM'S REALISTIC CHANCE OF ULTIMATE SUCCESS IS SLIGHT; OR

(B) THE CLAIM HAS NO ARGUABLE BASIS IN LAW OR FACT; OR

(C) IT IS CLEAR THAT THE PARTY OR PARTIES CANNOT PROVE FACTS IN SUPPORT OF THE CLAIM; OR

(D) THE CLAIM IS SUBSTANTIALLY SIMILAR TO A PREVIOUS CLAIM MADE BY THE INMATE BECAUSE THE CLAIM ARISES FROM THE SAME OPERATIVE FACTS.

(III) A DETERMINATION MADE BY THE COUNCIL IS REVIEWABLE PURSUANT TO AN ARTICLE SEVENTY-EIGHT PROCEEDING UNDER THE CIVIL PRACTICE LAW AND RULES COMMENCED BY THE LITIGANT.

S 3. This act shall take effect on the first of April next succeeding the date on which it shall have become a law.