

Bill No. 245

Page 175

Referred to Committee on *Government Administration
and Policy*

LCO No. 1535

Introduced by SEN. SMITH - 2nd DIST.

General Assembly,

January Session, A.D., 1971

AN ACT CONCERNING PROCEEDINGS IN FORMA PAUPERIS.

CONNECTICUT
STATE LIBRARY
LEGISLATIVE REFERENCE
SECTION

Be it enacted by the Senate and House of Representatives in
General Assembly convened:

Section 1. The purpose of this act is to insure the right
of every person in this state to resort to the courts of this
state for the protection or vindication of his rights, despite
his inability, by reason of poverty, to pay the costs, fees and
expenses of commencing, prosecuting or defending a legal action,
civil or criminal. The provisions of this act shall be liberally
interpreted and construed to effectuate the purpose of the act.

Sec. 2. When used in this act "lower court" means any court
of this state, including courts of probate but not including the
supreme court; "appellate court" means any court to which an
appeal may be taken from a lower court or state or municipal
agency, including the superior court, the court of common pleas,
and the appellate session or division of the circuit court;
"clerk" means the clerk of the court entertaining an application
to proceed in forma pauperis.

Sec. 3. (a) Any person may apply to a court for leave to
commence, prosecute or defend any suit, appeal, action or
proceedings, civil or criminal, in forma pauperis and serve a
copy of the application on all parties. The applicant shall file
an affidavit with his application stating that he is unable to
pay the fees, costs and expenses of the proceedings or to give
security therefor. An applicant seeking to commence an appeal in
forma pauperis shall file his application in the court from which

the appeal is taken within the time allowed for taking an appeal. 38

An applicant seeking to defend an appeal in forma pauperis shall 39

file his application with the court from which the appeal is 40

taken within the time allowed for undertaking the defense of an 41

appeal. An application for leave to proceed in forma pauperis 42

may be made at any stage of the proceedings, but, if it is made 43

at any time after the commencement of the action, appeal or 44

defense, the application shall indicate generally the fees, costs 45

or expenses to be waived or paid. (b) The court shall grant the 46

application and authorize the applicant to proceed in forma 47

pauperis, unless the court, after hearing finds, on its own 48

motion or that of the opposing party, that the affidavit is false 49

and that the applicant is able to pay such fees, costs and 50

expenses or give security therefor. No fee need be paid until 51

such finding. (c) No default for failure to plead shall enter in 52

any court against a person making application for leave to 53

proceed in forma pauperis in said court, if such application was 54

filed when a pleading should otherwise have been filed. The time 55

for pleading shall commence at the time such application is 56

finally decided. (d) Any affidavit filed pursuant to subsection 57

(a) of this section shall not be admissible in any proceeding 58

except that such affidavit shall not hereby be inadmissible in a 59

criminal action brought against the affiant because of 60

intentional or wilful misrepresentations contained in such 61

affidavit. (e) An applicant who proceeded in forma pauperis in 62

a lower court may prosecute an appeal in forma pauperis without 63

further authorization to the next higher court unless the lower 64

court shall revoke authorization by making a finding pursuant to 65

subsection (b) of this section. (f) The courts shall make

available forms which may be used by a person making application

for leave to proceed in forma pauperis. The clerks of court

shall assist persons in the preparation of said applications.

Sec. 4. (a) If an application to commence, prosecute or

defend any suit, appeal, action or proceedings, civil or

criminal, is denied, or revoked pursuant to subsection (c) of

section 3 of this act, the court shall state the reasons for its 65
decision. The clerk shall serve notice of the court's action on 66
the applicant, notifying the applicant of his right to seek 67
review and of the procedure to seek review. (b) A motion to 68
review the denial of an application to proceed in forma pauperis 69
may be filed with the clerk within thirty days of service of the 70
notice of denial or revocation. The clerk shall forward the 71
motion to the appropriate appellate court, together with the 72
original application and accompanying affidavit, the court's 73
reasons for denying or revoking the application and any 74
transcripts of hearings on the application or revocation and any 75
other papers in the files of the clerk. (c) If a lower court 76
has denied an application to proceed on appeal in forma pauperis, 77
or revoked authorization to proceed on appeal pursuant to 78
subsection (c) of section 3 of this act, an appellate court shall 79
make an independent finding as to whether the grounds for denying 80
an application found by the lower court pursuant to subsection 81
(b) of section 3 are present. In the absence of making a finding 82
pursuant to said subsection (b), the appellate court shall 83
authorize the appeal to proceed in forma pauperis. 84

Sec. 5. A person authorized to proceed in forma pauperis 81
shall be relieved from payment of court fees and costs, including 82
entry, filing and appeal fees, jury fees and the giving of 83
security therefor, and the giving of recognizances. A person so 84
authorized shall be entitled to payment of sheriffs' fees by the 85
clerk, including fees for the service of process, the publication 86
of orders of notice, the service of subpoenas and the service of 87
such citations, orders, injunctions, and writs that shall be 88
issued in the proceedings. Upon request of an applicant made to 89
the court, the court in its discretion may direct the clerk to 90
pay such other expenses as the court finds reasonable and 91
necessary to the presentation or appeal of the applicant's case,
including expert witness fees, court reporters' charges,
investigators' fees and copying and printing costs.

Sec. 6. Any recovery of money by judgment or settlement had 92
in favor of a person authorized under this act to proceed in 93
forma pauperis, except the amounts received as alimony or child 94
support or in a civil action for the support of spouse and
children, shall be paid to the clerk of the court in which the 95
order authorizing the person to proceed in forma pauperis was 96
entered, to await distribution according to court order. 97

Sec. 7. A person authorized under this act to proceed in 98
forma pauperis shall not be liable for the payment of any costs 99
or fees which have been waived or any expenses which have been 100
paid by the state under this act unless a recovery of money by 101
judgment or by settlement is had in his favor. In the event of 102
such a recovery a court may direct the clerk to retain no more 103
than one-third of the recovery to offset the costs and fees which 104
have been waived and the expenses which have been paid. This 105
section shall not apply to amounts recovered as alimony or child 106
support or in a civil action for the support of spouse and 107
children.

Sec. 8. Judgment may be rendered for costs at the 108
conclusion of the action or appeal as in other cases, but the 109
state shall not be liable for any such costs. Any costs or 110
expenses paid by the state pursuant to section 5 of this act on 111
behalf of the prevailing party shall be taxed in favor of the
state.

Sec. 9. Except as expressly provided otherwise by this act, 112
proceedings in forma pauperis shall be conducted in the same 113
manner as all other litigated causes. The same remedies shall be 114
available as are provided for by law in other cases, and no 115
remedy shall be denied a person proceeding in forma pauperis 116
because of his inability to post a surety bond, as required by 117
any statute. The court may require such alternate protection as 118
it finds the person can reasonably provide.

STATEMENT OF PURPOSE: To insure the right of every person in this 121
state to resort to the courts of this state for the protection or 122
vindication of his rights, despite his inability, by reason of 123
poverty, to pay the costs, fees and expenses of commencing 124
prosecuting or defending a legal action, civil or criminal.

[Proposed deletions are enclosed in brackets and proposed 126
additions are all capitalized, or underlined where appropriate.] 128