

- SUBJECT:** Allowing state court dismissal of inmate claims dismissed by federal court
- COMMITTEE:** Corrections — favorable, without amendment
- VOTE:** 8 ayes — Haggerty, Farrar, Allen, Ellis, Gray, Hopson, Isett, Ritter  
0 nays  
1 absent — Hodge
- WITNESSES:** None
- BACKGROUND:** State courts consider about 600 claims by inmates every year. In considering whether to dismiss a claim as frivolous or malicious, the court can consider any suit brought in a district, county, justice of the peace, or small claims court. However, if a claim has been filed in and dismissed by a federal court and then is refiled in state court, the state court cannot consider the federal dismissal in determining whether the claim is frivolous or malicious.
- Civil Practice and Remedies Code, sec. 14.003(b) allows the court, in determining whether an inmate's claim is frivolous or malicious, to consider whether:
- ! the claim's realistic chance of ultimate success is slight;
  - ! the claim has no arguable basis in law or in fact;
  - ! it is clear that the inmate cannot prove facts in support of the claim; or
  - ! the claim is substantially similar to a previous claim filed by the inmate because it arises from the same operative facts.
- DIGEST:** HB 1315 would allow a court to consider, in determining whether an inmate's claim was frivolous or malicious, that the substance of the claim had been filed in and dismissed by a federal court.
- This bill would take effect September 1, 2001, and would apply to claims filed on or after that date.