

BILL ANALYSIS

C.S.S.B. 1630
By: West
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that current law relating to vexatious litigants has created confusion with respect to the law's applicability and with respect to determining who may declare a person a vexatious litigant and what the effects of that declaration may be. The parties also contend that current law is unclear regarding the responsibilities of court clerks and the Office of Court Administration of the Texas Judicial System after a person is determined to be a vexatious litigant. C.S.S.B. 1630 seeks to amend current law relating to vexatious litigants to address that confusion.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 1630 amends the Civil Practice and Remedies Code to redefine "plaintiff," for purposes of statutory provisions relating to vexatious litigants, to mean an individual who commences or maintains a litigation pro se. The bill establishes that statutory provisions governing vexatious litigants do not apply to an attorney licensed to practice law in Texas unless the attorney proceeds pro se and that those provisions do not apply to a municipal court.

C.S.S.B. 1630 revises statutory provisions regarding a court's authority to enter a prefiling order against a person found to be a vexatious litigant to authorize a court, on its own motion or the motion of any party, to enter an order prohibiting a person from filing, pro se, a new litigation in a court to which the prefiling order applies without permission of the appropriate local administrative judge to file the litigation if the court finds, after notice and hearing, that the person is a vexatious litigant. The bill establishes that a prefiling order entered by a justice or constitutional county court applies only to the court that entered the order and that a prefiling order entered by a district or statutory county court applies to each court in Texas. The bill prohibits a vexatious litigant subject to a prefiling order from filing, pro se, new litigation in a court to which the order applies without seeking the permission of the local administrative judge of the type of court in which the vexatious litigant intends to file or, if the litigant intends to file in a justice or constitutional county court, the local administrative district judge of the county in which the vexatious litigant intends to file. The bill requires a vexatious litigant subject to a prefiling order who files a request seeking permission to file a litigation to provide a copy of the request to all defendants named in the proposed litigation. The bill authorizes the appropriate local administrative judge to make a determination on the request with or without a hearing and authorizes the judge, if the judge determines that a hearing is necessary, to require that the vexatious litigant filing the request provide notice of the hearing to all defendants named in the proposed litigation.

C.S.S.B. 1630 revises statutory provisions establishing procedures for a circumstance in which a clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling

order. The bill specifies that in such a case, any party is authorized to file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission to file litigation, rather than a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order. The bill requires the clerk, not later than the next business day after the date the clerk receives notice that a vexatious litigant subject to a prefiling order has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge, to notify the court that the litigation was mistakenly filed. The bill requires the court, on receiving notice from the clerk, to immediately stay the litigation and dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local administrative judge permitting the filing of the litigation. The bill repeals language requiring the court to take such action on the filing of notice by a party stating that the plaintiff is a vexatious litigant. The bill prohibits the appeal of an order dismissing litigation that was mistakenly filed by a clerk.

C.S.S.B. 1630 prohibits the Office of Court Administration of the Texas Judicial System from removing the name of a vexatious litigant subject to a prefiling order from the agency's Internet website unless the office receives a written order from the court that entered the prefiling order or from an appellate court. The bill establishes that an order of removal affects only a prefiling order entered by the same court and that a court of appeals decision reversing a prefiling order affects only the validity of an order entered by the reversed court.

C.S.S.B. 1630 repeals Section 11.001(3) and Section 11.103(b), Civil Practice and Remedies Code.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 1630 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Subdivision (5), Section 11.001, Civil Practice and Remedies Code, is amended.	SECTION 1. Same as engrossed version.
SECTION 2. Subchapter A, Chapter 11, Civil Practice and Remedies Code, is amended.	SECTION 2. Same as engrossed version.
SECTION 3. Section 11.054, Civil Practice and Remedies Code, is amended.	SECTION 3. Same as engrossed version.
SECTION 4. Section 11.101, Civil Practice and Remedies Code, is amended.	SECTION 4. Same as engrossed version.
SECTION 5. Section 11.102, Civil Practice	SECTION 5. Same as engrossed version.

and Remedies Code, is amended.

SECTION 6. The heading to Section 11.103, Civil Practice and Remedies Code, is amended.

SECTION 7. Subsections (a), (c), and (d), Section 11.103, Civil Practice and Remedies Code, are amended.

SECTION 8. Subchapter C, Chapter 11, Civil Practice and Remedies Code, is amended by adding Section 11.1035 to read as follows:

Sec. 11.1035. MISTAKEN FILING. (a) If the clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 without an order from the appropriate local administrative judge described by Section 11.102(a), any party may file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission under Section 11.102 to file litigation.

(b) Not later than the 24th hour after receiving notice that a vexatious litigant subject to a prefiling order under Section 11.101 has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge described by Section 11.102(a), the clerk shall notify the court that the litigation was mistakenly filed. On receiving notice from the clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing of the litigation.

(c) An order dismissing litigation that was mistakenly filed by a clerk may not be appealed.

SECTION 9. Section 11.104, Civil Practice and Remedies Code, is amended.

SECTION 6. Same as engrossed version.

SECTION 7. Same as engrossed version.

SECTION 8. Subchapter C, Chapter 11, Civil Practice and Remedies Code, is amended by adding Section 11.1035 to read as follows:

Sec. 11.1035. MISTAKEN FILING. (a) If the clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 without an order from the appropriate local administrative judge described by Section 11.102(a), any party may file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission under Section 11.102 to file litigation.

(b) Not later than the next business day after the date the clerk receives notice that a vexatious litigant subject to a prefiling order under Section 11.101 has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge described by Section 11.102(a), the clerk shall notify the court that the litigation was mistakenly filed. On receiving notice from the clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing of the litigation.

(c) An order dismissing litigation that was mistakenly filed by a clerk may not be appealed.

SECTION 9. Same as engrossed version.

SECTION 10. Subdivision (3), Section 11.001, and Subsection (b), Section 11.103, Civil Practice and Remedies Code, are repealed.

SECTION 10. Same as engrossed version.

SECTION 11. The change in law made by this Act applies only to an action commencing on or after the effective date of this Act. An action commencing before the effective date of this Act is governed by the law as it existed on the date when the action commenced, and that law is continued in effect for that purpose.

SECTION 11. Same as engrossed version.

SECTION 12. This Act takes effect September 1, 2013.

SECTION 12. Same as engrossed version.