

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1630
By: West
State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, Chapter 11 (Vexatious Litigants) of the Civil Practice and Remedies Code creates confusion regarding the statutes' applicability, those individuals to whom the statute applies, who may declare a person a vexatious litigant, and the effects of that determination. It is also unclear as to the responsibilities of the court clerks and the Office of Court Administration (OCA) after the determination is made.

C.S.S.B. 1630 seeks to clarify that the statute applies to pro se litigants. It further adds that a court can declare a person a vexatious litigant in accordance with their existing authority. C.S.S.B. 1630 further states the effects of a vexatious litigant determination upon filings in courts across the state, outlines the duties of court clerks after that determination is made, and provides clarity and consistency for OCA's maintenance of the vexatious litigants list.

C.S.S.B. 1630 amends current law relating to the protection of defendants against vexatious litigants.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.001(5), Civil Practice and Remedies Code, to redefine "plaintiff."

SECTION 2. Amends Subchapter A, Chapter 11, Civil Practice and Remedies Code, by adding Section 11.002, as follows:

Sec. 11.002. APPLICABILITY. (a) Provides that this chapter does not apply to an attorney licensed to practice law in this state unless the attorney proceeds pro se.

(b) Provides that this chapter does not apply to a municipal court.

SECTION 3. Amends Section 11.054, Civil Practice and Remedies Code, as follows:

Sec. 11.054. CRITERIA FOR FINDING PLAINTIFF A VEXATIOUS LITIGANT. Authorizes a court to find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:

(1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant, rather than maintained in propria persona at least five litigations, other than in a small claims court that have been finally determined adversely to the plaintiff, permitted to remain pending at least two years without having been brought to trial or hearing, or

determined by a trial or appellate court to be frivolous or groundless under state or federal law or rules of procedure;

(2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, rather than in propria persona, either the validity of the determination against the same defendant as to whom the litigation was finally determined, or the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigant was finally determined; or

(3) Makes no change to this subdivision.

SECTION 4. Amends Section 11.101, Civil Practice and Remedies Code, by amending Subsection (a) and adding Subsections (d) and (e), as follows:

(a) Authorizes a court to, on its own motion or the motion of any party, enter an order prohibiting a person from filing, pro se, a new litigation in a court to which the order applies under this section without permission of the appropriate local administrative judge described by Section 11.102(a) to file the litigation if the court finds, after notice and hearing as provided by Subchapter B (Vexatious Litigants), that the person is a vexatious litigant. Deletes existing text authorizing a court to, on its own motion or the motion of any party, enter an order prohibiting a person from filing, in propria persona, a new litigation in a court in this state if the court finds, after notice and hearing as provided by Subchapter B, that the person is a vexatious litigant, and the local administrative judge of the court in which the person intends to file the litigation has not granted permission to the person under Section 11.102 to file the litigation.

(b) Provides that a prefiling order entered under Subsection (a) by a justice or constitutional county court applies only to the court that entered the order.

(e) Provides that a prefiling order entered under Subsection (a) by a district or statutory county court applies to each court in this state.

SECTION 5. Amends Section 11.102, Civil Practice and Remedies Code, as follows:

Sec. 11.102. PERMISSION BY LOCAL ADMINISTRATIVE JUDGE. (a) Provides that a vexatious litigant subject to a prefiling order under Section 11.101 (Prefiling Order; Contempt) is prohibited from filing, pro se, new litigation in a court to which the order applies without seeking the permission of:

(1) the local administrative judge of the type of court in which the vexatious litigant intends to file, except as provided by Subdivision (2); or

(2) the local administrative district judge of the county in which the vexatious litigant intends to file if the litigant intends to file in a justice or constitutional county court.

(b) Requires a vexatious litigant subject to a prefiling order under Section 11.101 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.

(c) Authorizes the appropriate local administrative judge described by Subsection (a) to make a determination on the request with or without a hearing. Authorizes the judge, if the judge determines that a hearing is necessary, to require that the vexatious litigant filing a request under Subsection (b) provide notice of the hearing to all defendants named in the proposed litigation.

(d) Authorizes the appropriate local administrative judge described by Subsection (a) to grant permission to a vexatious litigant, rather than to grant permission to a

person found to be a vexatious litigant, subject to a prefiling order under Section 11.101, to file a litigation only if it appears to the judge that the litigation has merit and has not been filed for the purposes of harassment or delay.

(e) Redesignates existing Subsection (b) as Subsection (e). Authorizes the appropriate local administrative judge described by Subsection (a) to condition permission on the furnishing of security for the benefit of the defendant as provided in Subchapter B.

(f) Redesignates existing Subsection (c) as Subsection (f). Provides that a decision of the appropriate local administrative judge described by Subsection (a) denying a litigant permission to file a litigation under Subsection (d), or conditioning permission to file a litigation on the furnishing of security under Subsection (e), is not grounds for appeal, except that the litigant is authorized to apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision, rather than provides that a decision of a local administrative judge denying a litigant permission to file a litigation under Subsection (a), or conditioning permission to file a litigation on the furnishing of security under Subsection (b), is not grounds for appeal, except that the litigant is authorized to apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision.

SECTION 6. Amends the heading to Section 11.103, Civil Practice and Remedies Code, to read as follows:

Sec. 11.103. DUTIES OF CLERK.

SECTION 7. Amends Sections 11.103(a), (c), and (d), Civil Practice and Remedies Code, as follows:

(a) Prohibits a clerk of a court, except as provided by Subsection (d), from filing a litigation, original proceeding, appeal, or other claim presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing.

(c) Provides that the litigation remains stayed and the defendant need not plead until the 10th day after the date the defendant is served with a copy of the order, if the appropriate local administrative judge described by Section 11.102(a) issues an order permitting the filing of the litigation, rather than an order permitting the filing of the litigation under Subsection (b) (relating to authorizing any party, if the clerk mistakenly files a litigation without an order from the local administrative judge, to file with the clerk and serve on the plaintiff and the other parties to the suit a notice stating that the plaintiff is a vexatious litigant subject to prefiling order).

(d) Authorizes a clerk of a court of appeals to file an appeal from a prefiling order entered under Section 11.101 designating a person a vexatious litigant or a timely filed writ of mandamus under Section 11.102, rather than under Section 11.102(c).

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

Sec. 11.1035. MISTAKEN FILING. (a) Authorizes any party, 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), 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 under Section 11.102 to file litigation.

(b) Requires the clerk, 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), to notify the court that the litigation was mistakenly filed. Requires the court, on receiving notice from the clerk, to immediately stay the litigation and to 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) Prohibits an order dismissing litigation that was mistakenly filed by a clerk from being appealed.

SECTION 9. Amends Section 11.104, Civil Practice and Remedies Code, by adding Subsection (c), as follows:

(c) Prohibits the Office of Court Administration of the Texas Judicial System (OCA) from removing the name of a vexatious litigant subject to a prefiling order under Section 11.101 from the agency's Internet website unless OCA receives a written order from the court that entered the prefiling order or from an appellate court. Provides that an order of removal affects only a prefiling order entered under Section 11.101 by the same court. Provides that a court of appeals decision reversing a prefiling order entered under Section 11.101 affects only the validity of an order entered by the reversed court.

SECTION 10. Repealer: Sections 11.001(3) (defining "local administrative judge"), Civil Practice and Remedies Code.

Repealer: 11.103(b) (relating to authorizing any party, if the clerk mistakenly files a litigation without an order from the local administrative judge, to file with the clerk and serve on the plaintiff and the other parties to the suit a notice stating that the plaintiff is a vexatious litigant subject to prefiling order), Civil Practice and Remedies Code.

SECTION 11. Makes the change in law made by the application of this Act prospective.

SECTION 12. Effective date: September 1, 2013.