

BILL ANALYSIS

Senate Research Center

S.B. 1630
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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.

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. 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.

As proposed, 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 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 or a plaintiff who is represented by an attorney licensed to practice law in this state.

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

SECTION 2. Amends the heading to Subchapter B, Chapter 11, Civil Practice and Remedies Code, to read as follows:

SUBCHAPTER B. VEXATIOUS LITIGANT DETERMINATION

SECTION 3. Amends Section 11.051, Civil Practice and Remedies Code, as follows:

Sec. 11.051. **MOTION FOR ORDER DETERMINING PLAINTIFF A VEXATIOUS LITIGANT AND REQUESTING SECURITY.** (a) Creates this subsection from existing text. Makes no further change to this subsection.

(b) Authorizes a court to, on its own motion, find a party a vexatious litigant during the pendency of the litigation.

SECTION 4. Amends Section 11.052, Civil Practice and Remedies Code, as follows:

Sec. 11.052. STAY OF PROCEEDINGS ON FILING OF MOTION. (a) Provides that on the filing of a motion or the court's own motion under Section 11.051, the litigation is stayed and the moving defendant is not required to plead:

(1) if the motion is denied or the court fails to find the plaintiff is a vexatious litigant, before the 10th day after the date it is denied; or

(2) if the motion is granted or the court finds the plaintiff is a vexatious litigant and orders the plaintiff to furnish security, before the 10th day after the date the moving defendant or the court receives written notice that the plaintiff has furnished the required security.

(b) Provides that on the filing of a motion by the defendant or the court's own motion under Section 11.051 on or after the date the trial starts, the litigation is stayed for a period the court determines.

SECTION 5. Amends Section 11.053, Civil Practice and Remedies Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires the court, on receipt of a motion or the court's own motion under Section 11.051, to, after notice to all parties, conduct a hearing to determine whether the plaintiff is a vexatious litigant, rather than conduct a hearing to determine whether to grant the motion.

(c) Authorizes a plaintiff found to be a vexatious litigant under this subchapter to appeal the court's order.

SECTION 6. Amends the heading to Section 11.055, Civil Practice and Remedies Code, to read as follows:

Sec. 11.055. EFFECTS OF DETERMINATION OF VEXATIOUS LITIGANT; SECURITY.

SECTION 7. Amends Sections 11.055(a) and (b), Civil Practice and Remedies Code, as follows:

(a) Authorizes the court, if after hearing the evidence on the motion, the court determines that the plaintiff is a vexatious litigant, to allow the litigation to proceed only if the court finds that the litigation has merit, and has not been filed for the purpose of harassment or delay. Deletes existing text requiring a court to order the plaintiff to furnish security for the benefit of the moving defendant if the court, after hearing the evidence on the motion, determines that the plaintiff is a vexatious litigant.

(b) Requires the court, if the court allows the litigation to proceed, to order the plaintiff to furnish security for the benefit of the defendant and in its discretion to determine the date by which the security must be furnished. Make nonsubstantive changes.

SECTION 8. Amends Subchapter C, Chapter 11, Civil Practice and Remedies Code, by adding Section 11.1015, as follows:

Sec. 11.1015. APPLICABILITY OF A VEXATIOUS LITIGANT DETERMINATION.

(a) Provides that an order under Subchapter B that is issued by a justice or constitutional county court applies only to the justice or constitutional county court issuing the order.

(b) Provides that an order under Subchapter B issued by a district or statutory county court applies to every court in this state.

SECTION 9. 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 is prohibited from filing, in propria persona, new litigation in a court of this state 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 who files a request seeking permission to file suit to provide a copy of the request to all defendants named in the proposed litigation.

(c) Authorizes the judge 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 judge to grant permission to a person found to be a vexatious litigant under Subchapter B 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, rather than authorizes a local administrative judge to grant permission to a person found to be a vexatious litigant under Section 11.101 (Prefiling Order; Contempt) 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 judge to condition permission on the furnishing of security for the benefit of the defendant, rather than authorizes the local administrative judge 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 a judge 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 10. Amends the heading to Section 11.103, Civil Practice and Remedies Code, to read as follows:

Sec. 11.103. DUTIES OF CLERK REGARDING ORDERS ISSUED BY A DISTRICT OR STATUTORY COUNTY COURT.

SECTION 11. 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 by a vexatious litigant, rather than presented 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 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 local administrative judge issues an order permitting the filing of the litigation, rather than an order permitting the filing of the litigation under Subsection (b).

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

SECTION 12. 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 by a vexatious litigant without an order from the appropriate 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 required to obtain permission to file litigation under Section 11.102.

(b) Requires the clerk, not later than the 24th hour after receiving notice that a vexatious litigant has filed litigation without obtaining an order from the appropriate local administrative judge, 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 under Section 11.102 permitting the filing of the litigation.

(c) Prohibits an order dismissing litigation that was mistakenly filed by a clerk from being appealed.

SECTION 13. Amends Section 11.104, Civil Practice and Remedies Code, as follows:

Sec. 11.104. NOTICE TO OFFICE OF COURT ADMINISTRATION; DISSEMINATION OF LIST. (a) Requires a clerk of a court to provide the Office of Court Administration of the Texas Judicial System (OCA) a copy of an order issued under Subchapter B determining that a person is a vexatious litigant not later than the 30th day after the date the order is signed, rather than requires a clerk of a court to provide OCA a copy of any prefiling order issued under Section 11.101 not later than the 30th day after the date the prefiling order is signed.

(b) Requires OCA to post on OCA's Internet website a list of vexatious litigants and a copy of the order determining that a person is a vexatious litigant, rather than requires OCA to post on OCA's Internet website a list of vexatious litigants subject to prefiling orders under Section 11.101. Requires that the list, on request of a person designated a vexatious litigant, indicate whether the person designated a vexatious litigant has filed an appeal of that designation.

(c) Prohibits OCA from removing the name of a vexatious litigant from the agency's Internet website unless OCA receives a written order from the court that declared the person a vexatious litigant or from an appellate court. Provides that an order of removal affects only an order determining a person is a vexatious litigant from the same court. Provides that a court of appeals decision reversing the order determining a person is a vexatious litigant affects only the validity of an order from the reversed court.

SECTION 14. Repealer: Sections 11.001(3) (defining "local administrative judge"), Civil Practice and Remedies Code.

Repealer: 11.101 (Prefiling Order; Contempt), 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 15. Makes the change in law made by the application of this Act prospective.

SECTION 16. Effective date: September 1, 2013.