

HB 335 with HCA 1 -- VEXATIOUS LITIGATION

SPONSOR: McGaugh

COMMITTEE ACTION: Voted "Do Pass with Amendments" by the Standing Committee on Civil and Criminal Proceedings by a vote of 8 to 4.

This bill specifies that in any litigation pending in any court of this state, a defendant may move the court at any time until final judgment is entered, upon notice and hearing, for an order requiring the plaintiff to furnish security or for an order dismissing the litigation. The motion must be based upon the grounds and supported by a showing that the plaintiff is a vexatious litigant and there is not a reasonable probability that he or she will prevail in the litigation against the moving defendant.

At the hearing upon the motion, the court must consider any evidence as may be material to the grounds of the motion, both written or oral and by witnesses or affidavit. A determination made by the court in determining or ruling upon the motion is not to be considered a determination of any issue in the litigation.

When a motion is filed prior to trial under these provisions, the litigation must be stayed and the moving defendant need not plead until 10 days after the motion has been denied, or if the motion is granted, until 10 days after he or she has received written notice that the required security has been furnished.

If after hearing the evidence on the motion the court determines that the plaintiff is a vexatious litigant and there is no reasonable probability the plaintiff will prevail in the litigation against the moving defendant, the court must order the plaintiff to furnish a security in the amount and within the time as specified by the court. If the security is not furnished as required, the litigation must be dismissed in the favor of the defendant.

If after hearing evidence on the motion the court determines that the litigation has no merit and has been filed for the purpose to harass or delay, the court must dismiss the litigation.

A court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state pro se without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant must be punished as contempt of court.

The presiding judge must permit the filing of the litigation only

if it appears that the litigation has merit and has not been filed for the purpose to harass or delay. In addition, the presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants.

The clerk may not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding judge permitting the filing. If the clerk mistakenly files the litigation without the order, any party may file with the clerk and serve on the plaintiff and other parties a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order. The filing of the notice must automatically stay the litigation. The litigation must be automatically dismissed unless the plaintiff obtains an order from the presiding judge permitting the filing within 10 days of the filing of the notice. If the presiding judge issues an order permitting the filing, the stay of the litigation must remain in effect until 10 days after the defendants are served with a copy of the order.

The presiding judge of a court may designate another judge of the same court to act on his or her behalf in exercising this authority. The clerk must also provide the state courts administrator a copy of any prefiling orders issued. The state courts administrator must maintain a record of vexatious litigants subject to those prefiling orders and must annually disseminate a list of those persons to the clerks of the courts of this state.

A vexatious litigant subject to a prefiling order may file an application to vacate the prefiling order. The application must be filed in the court that entered the prefiling order, either in the action in which the prefiling order was entered or in conjunction with a request to the presiding judge to file new litigation. The application must be made before the judge that entered the order, or if that judge is unavailable, then it must be made before the presiding judge or his or her designee. A vexatious litigant whose application was denied must not be permitted to file another application for one year after the date of the denial of the previous application.

A court may vacate a prefiling order and order removal of vexatious litigant's name from the state courts administrator list of vexatious litigants subject to prefiling orders upon a showing of a material change in the facts upon which the order was granted and that it is just in vacating the order.

HCA 1: Broadens the definition to include any party who brings a frivolous lawsuit; and exempts family law and order of protection cases from the provisions of the bill

PROPONENTS: Supporters say that this bill will assist in reducing frivolous lawsuits by denying people who file these lawsuits the ability to do so if they abuse their rights.

Testifying for the bill were Representative McGaugh; Harvey Tettlebaum; and Colleen S. Coble.

OPPONENTS: There was no opposition voiced to the committee.