

BILL ANALYSIS

Senate Research Center

H.B. 3087
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Economic Development
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Engrossed

DIGEST

Currently, Texas law does not require plaintiffs found by a court to be "vexatious" to post security for costs before proceeding with a lawsuit. California and Hawaii have passed laws requiring plaintiffs found by a court to be "vexatious" to post security for costs before proceeding with a new lawsuit in an attempt to reduce litigation. This bill would require plaintiffs found by a court to be "vexatious" to post security for costs before proceeding with a lawsuit.

PURPOSE

As proposed, H.B. 3087 requires plaintiffs found by a court to be "vexatious" to post security for costs before proceeding with a lawsuit.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 2A, Civil Practice and Remedies Code, by adding Chapter 11, as follows:

CHAPTER 11. VEXATIOUS LITIGANTS SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. Defines "defendant," "litigation," "local administrative judge," "moving defendant," and "plaintiff."

SUBCHAPTER B. VEXATIOUS LITIGANTS

Sec. 11.051. MOTION FOR ORDER DETERMINING PLAINTIFF A VEXATIOUS LITIGANT AND REQUESTING SECURITY. Authorizes the defendant, in a litigation in this state, to move the court for an order determining that the plaintiff is a vexatious litigant; and requiring the plaintiff to furnish security.

Sec. 11.052. STAY OF PROCEEDINGS ON FILING OF MOTION. Provides that on the filing of a motion under Section 11.051 before the date the trial starts, the litigation is stayed and the moving defendant is not required to plead if the motion is denied, before the 10th day after the date it is denied; or if the motion is granted, before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security. Provides that on the filing of a motion under Section 11.051 on or after the date the trial starts, the litigation is stayed for a period determined by the court.

Sec. 11.053. HEARING. Requires the court, on receipt of a motion under Section 11.051, to, after notice to all parties, conduct a hearing to determine whether to grant the motion. Authorizes the court to consider any evidence material to the grounds of the motion.

Sec. 11.054. CRITERIA FOR FINDING PLAINTIFF A VEXATIOUS LITIGANT. Authorizes the 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 other evidence regarding previous litigation by the plaintiff.

Sec. 11.055. SECURITY. Requires 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. Requires the court, in its discretion, to determine the date by which the security must be furnished. Requires the court to provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant's reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees.

Sec. 11.056. DISMISSAL FOR FAILURE TO FURNISH SECURITY. Requires the court to dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order.

Sec. 11.057. DISMISSAL ON THE MERITS. Provides that if the litigation is dismissed on its merits, the moving defendant has recourse to the security furnished by the plaintiff in an amount determined by the court.

SUBCHAPTER C. PROHIBITING FILING OF NEW LITIGATION

Sec. 11.101. PREFILING ORDER; CONTEMPT. Authorizes a court to enter an order prohibiting a person from filing a new litigation in a court in this state if the court finds, after notice and hearing as provided by Subchapter B, certain facts. Provides that a person who disobeys an order under Subsection (a) is subject to contempt of court.

Sec. 11.102. PERMISSION BY LOCAL ADMINISTRATIVE JUDGE. Authorizes a local administrative judge to grant permission to a person found to be a vexatious litigant 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 purpose of harassment or delay. Authorizes the local administrative judge to condition permission on the furnishing of security for the benefit of the defendant as provided in Subchapter B.

Sec. 11.103. DUTIES OF CLERK; MISTAKEN FILING. Prohibits a clerk of a court to file a litigation by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the local administrative judge permitting the filing. Authorizes 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 a prefiling order under Section 11.101. Requires the court to immediately stay and dismiss the litigation unless the plaintiff, no later than the 10th day after the date the notice is filed, obtains an order from the local administrative judge under Section 11.102 permitting the filing of the litigation. Provides that if the local administrative judge issues an order permitting the filing of the litigation under Subsection (b), 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.

Sec. 11.104. NOTICE TO OFFICE OF COURT ADMINISTRATION; DISSEMINATION OF LIST. Requires a clerk of a court to provide the Office of Court Administration of the Texas Judicial System (office) a copy of any prefiling order issued under Section 11.101. Requires the office to maintain a list of vexatious litigants subject to prefiling orders under Section 11.101 and to annually send the list to the clerks of the courts of this state.

SECTION 2. Effective date: September 1, 1997.
Makes application of this Act prospective.

SECTION 3. Emergency clause.