

STORAGE NAME: h0557a.jud
DATE: February 8, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 557
RELATING TO: Florida Vexatious Litigant Law
SPONSOR(S): Rep. Goodlette
TIED BILL(S): CS/SB 154

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIARY YEAS 7 NAYS 1
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
-

I. SUMMARY:

HB 557 creates the Florida Vexatious Litigation Law. The bill requires a plaintiff to furnish a security in an amount sufficient to cover a defendant's reasonable expected expenses of litigation, if the defendant, upon a motion, shows the court that the plaintiff has prosecuted at least 5 civil actions, *pro se*, during the preceding 5-year period without success and that the plaintiff is not reasonably likely to prevail on the claims at hand. The bill applies to civil actions, excluding probate and family law matters.

If the court orders the plaintiff to furnish security and the plaintiff fails to do so, the court shall dismiss the action with prejudice as to the defendant for whose benefit the security was ordered. The bill also requires a civil action to be stayed on the filing of a motion for an order to post security, and gives a defendant 10 days to file a responsive pleading if such motion is denied or 10 days to respond after the security has been furnished.

The bill allows a court to enter a prefiling order prohibiting a vexatious *pro se* plaintiff from filing any actions in that circuit without first obtaining leave of the administrative [chief] judge of that circuit. The bill allows the court to punish violations of such prefiling orders by contempt. Leave of court is permitted if the plaintiff shows that the proposed action is meritorious and is not being filed for the purpose of delay or harassment.

The bill also directs clerks of court not to file any new action by a vexatious *pro se* litigant unless that litigant has obtained an order from the administrative [chief] judge permitting such filing. The bill allows a defendant to file a notice that the plaintiff in an action is a vexatious plaintiff subject to a prefiling order, and such actions will be stayed pending the court's granting of leave to the plaintiff to proceed with the action. In such cases, the defendant will have 10 days to respond after service by the plaintiff of an order granting leave to maintain the action. Otherwise, the court shall dismiss the action with prejudice 10 days after the filing of the notice.

The bill requires the clerks of court to provide copies of all prefiling orders to the Clerk of the Supreme Court, which is charged with maintaining a registry of all vexatious litigants.

Finally, the bill states that the relief provided shall be cumulative to other state laws and the Florida Rules of Civil Procedure, including s. 57.105, F.S.

The bill's fiscal impact on state government is undetermined.

The bill has an effective date of October 1, 2000.

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The Committee on Judiciary adopted one amendment which is traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

The bill creates a judicial enforcement mechanism to punish vexatious litigants.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

The bill will restrict the ability of a vexatious *pro se* litigant to file civil actions.

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

Currently, there is no Florida Statute or court rule that specifically prohibits *pro se* litigants from filing civil lawsuits when those litigants have previously instituted numerous lawsuits which have been determined to be meritless, frivolous, or were filed solely for the purpose of harassment. Although s. 57.105, F.S., provides for the recovery of costs and attorney's fees in a civil action which is determined to be frivolous, the threat of a judgment against plaintiffs for costs and attorney's fees does not always deter them from filing further frivolous *pro se* lawsuits. See, Kreager v. Glickman, 519 So.2d 666 (Fla. 4th DCA 1988).

Although there is no Florida statute or court rule which expressly prohibits *pro se* litigants from filing frivolous civil actions, courts do have inherent authority to enjoin vexatious *pro se* litigants. In Platel v. Maguire, Voorhis & Wells, P.A., 436 So.2d 303 (Fla. 5th DCA 1983), the court entered an order to show cause why the *pro se* litigant should not be prohibited from appearing *pro se* in any future proceedings in that court after the *pro se* litigant inundated the court with nine notices of appeal in the prior 14 months, along with numerous voluminous and incomprehensible documents. The court, citing Shotkin v. Cohen, 163 So.2d 330 (Fla. 3rd DCA 1964), stated the following:

This court recognizes the constitutional mandate that courts be open to all persons under Article I, §21, Florida Constitution. Because the judicial process is the recognized dispute-settlement method, access to courts should not be placed beyond the reach of any citizen. However, when one person, by his activities, upsets the normal procedure of the court so as to interfere with the causes of other litigants, it is necessary to exercise restraint upon that person, i.e., requirement that pleadings be accompanied by an attorney's signature--a restraint which does not amount to a complete denial of access.

Platel, at 304

The court's ruling in the Platel case applied to a *pro se* litigant involved in appellate proceedings. See also Martin v. State, No. SC 93573 (Fla., Jan. 20, 2000)(appellant had filed over 43 *pro se* appeals and petitions in the Fourth District Court of Appeal in 1995 alone and was subsequently sanctioned by the Supreme Court). However, the same rulings have been rendered in cases involving *pro se* litigants in civil trial court proceedings and habeas corpus proceedings. In Kreager v. Glickman, 519 So.2d 666 (Fla. 4th DCA 1988), the Fourth District

Court of Appeal upheld the trial court's order prohibiting the plaintiff from appearing *pro se* in any proceedings in that court's division based on the *pro se* litigant's repeatedly filed vexatious, baseless, and harassing law suits. Additionally, in Birge v. State, 620 So.2d 234 (Fla. 1st DCA 1993), the First District Court of Appeal entered an order prohibiting a *pro se* habeas corpus petitioner from appearing on his own behalf in that court because his *pro se* activities interfered with the orderly process of judicial administration.

Section 57.085, F.S. is analogous to HB 557. In 1996, the Legislature enacted s. 57.085, F.S., to address a perceived problem of frivolous lawsuits filed by indigent prison inmates. See ch. 96-106, L.O.F. One of the specific problems identified by the Legislature was that "under current law frivolous inmate lawsuits are dismissable by the courts only after considerable expenditure of precious taxpayer and judicial resources..." Ch. 96-106, at 93, L.O.F. Accordingly, the statute calls for prescreening of an indigent inmate's lawsuit by the court before it is accepted for filing. Section 57.085(6), F.S., provides the following:

- (6) Before an indigent prisoner may intervene in or initiate any judicial proceeding, the court must review the prisoner's claim to determine whether it is legally sufficient to state a cause of action for which the court has jurisdiction and may grant relief. The court shall dismiss all or part of an indigent prisoner's claim which:
 - (a) Fails to state a claim for which relief may be granted;
 - (b) Seeks monetary relief from a defendant who is immune from such relief;
 - (c) Seeks relief for mental or emotional injury where there has been no related allegation of a physical injury; or
 - (d) Is frivolous, malicious, or reasonably appears to be intended to harass one or more named defendants.

Pursuant to s. 57.085(10), F.S., the statute applies to civil proceedings but not to criminal or collateral criminal proceedings.

Vexatious litigant statutes have been enacted in California, Colorado, Hawaii, Ohio, and Texas. Ohio and Texas have access to courts provisions in their state constitutions that are similar to Florida's, but there are no reported decisions in those states addressing challenges to the constitutionality of their vexatious litigant statutes. There have been no reported decisions construing the Hawaii statute. The California statute was challenged and upheld on equal protection grounds two years after it was enacted. See Taliferro v. Hoogs, 236 Cal. App. 2d 521 (Cal. App. Ct. 1965). In addition, the United States Supreme Court has upheld restrictions on filings by *pro se* plaintiffs. See In re McDonald, 489 U.S. 180 (1989)(denying leave to proceed *in forma pauperis* based on history of filing frivolous habeas petitions and denying claim that restrictions violate the equal protection clause of the United States constitution).

C. EFFECT OF PROPOSED CHANGES:

The Florida Vexatious Litigant Law provides that, in any civil action pending in any court of this state, including actions governed by the Florida Small Claims Rules, any defendant may move the court for an order requiring a *pro se* plaintiff to furnish security based on the grounds that the plaintiff is a vexatious litigant and is not reasonably likely to prevail on the merits of the action against the moving defendant. The court shall consider any evidence, written or oral, by witness or affidavit, which may be relevant to the motion. If, after hearing the evidence, the court determines that the plaintiff is a vexatious litigant and is not reasonably likely to prevail on the merits of the action against the moving defendant, the court shall order the plaintiff to post security for the payment of the moving defendant's reasonable attorney's fees and costs, in an amount and within the time the court deems appropriate.

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A vexatious litigant is defined as follows:

1. A person as defined in s. 1.01(3), F.S., who, in the immediately preceding 5-year period, has commenced, prosecuted, or maintained, *pro se*, five or more civil actions in any court in this state, except an action governed by the Florida Small Claims Rules, which actions have been finally and adversely determined against such person or entity; or
2. Any person or entity previously found to be a vexatious litigant pursuant to this section.

The bill defines "action" as "...a civil action governed by the Florida Rules of Civil Procedure and proceedings governed by the Florida Probate Rules, but does not include actions concerning family law matters governed by the Florida Family Law Rules of Procedure or any action in which the Florida Small Claims Rules apply." Accordingly, the bill's provisions do not apply to *pro se* litigants involved in proceedings concerning divorce, child custody, alimony and other family law matters designated in the Florida Family Law Rules of Procedure. Although a *pro se* litigant may not be declared to be a vexatious litigant based upon adverse results in small claims matters (i.e. damages less than \$5,000), the bill's prefiling and security provisions do apply to small claims matters filed by a *pro se* litigant who has previously been declared a vexatious litigant or is being sought to be declared a vexatious litigant based upon prior non-small claims matters.

The bill authorizes the court in any judicial circuit may, on its own motion or on the motion of any party, enter a prefiling order prohibiting a vexatious litigant from commencing, *pro se*, any new action in the courts of that circuit without first obtaining leave of the administrative judge of that circuit. Leave of court shall be granted by the administrative judge only upon a showing that the proposed action is meritorious and is not being filed for the purpose of delay or harassment. Filing of the proposed action may be conditioned upon the furnishing of security by the plaintiff. If the plaintiff fails to post the required security the court shall immediately issue an order dismissing the case with prejudice as to the defendant for whose benefit the security was ordered. If the plaintiff furnishes the required security, the moving defendant shall respond or plead no later than ten days after the required security has been furnished.

The bill further provides that, when a prefiling order is entered, the clerk of the trial court shall provide copies of the order to the Clerk of the Florida Supreme Court, who shall maintain a registry of all vexatious litigants. The clerk of the court shall not file any new action by a vexatious litigant, *pro se*, unless the vexatious litigant has obtained an order from the administrative judge permitting such filing. If the clerk of the court mistakenly permits a vexatious litigant to file an action *pro se* in contravention of a prefiling order, any party to that action may file a notice that the plaintiff is a *pro se* vexatious litigant subject to a prefiling order. The filing of such a notice shall automatically stay the litigation against all defendants to that action. The administrative judge shall automatically dismiss the action, with prejudice, within ten days after the filing of the notice unless the plaintiff files a motion for leave to file the action.

The relief provided by the bill is cumulative to any other relief or remedy available to a defendant under the laws of this state and the Florida Rules of Civil Procedure, including, but not limited to, the relief provided under s. 57.105, F.S. Section 57.105, F.S., provides sanctions for raising unsupported claims or defenses, as well as damages for the improper delay of litigation.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None estimated.

2. Expenditures:

The Office of State Courts Administrator indicates that the bill may deter the filing of frivolous *pro se* lawsuits in the trial courts, thereby diminishing the burdens on the courts. However, the bill will increase judicial involvement in procedures related to the posting of security and issuing of prefiling orders. The net effects of these changes is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None estimated.

2. Expenditures:

None estimated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have the incidental effect of reducing the number of vexatious lawsuits filed by pro se litigants against business entities. The bill may directly reduce the cost of defending such suits by allowing a defendant to challenge the merits and practices of the plaintiff early in the litigation.

D. FISCAL COMMENTS:

The Office of State Courts Administrator has not provided a fiscal note on this bill to date. The effects of the bill on the judicial system have not therefore been estimated.

The Florida Association of Court Clerk's reports that the trial court clerks will have additional functions associated with keeping and reporting a list of vexatious litigants; however, the cost for such additional functions is indeterminate at this time.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not affect the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not affect the amount of state tax shared with a city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The directive language contained in paragraph 6 of the bill regarding the Clerk of the Supreme Court may be read to contravene the Supreme Court's authority as a coordinate branch of government. The Court is expressly authorized to appoint and *direct the duties* of the clerk pursuant to Article 5, Section 3(c) of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

The bill's language regarding the "furnishing" of a security to a moving defendant is ambiguous. Presumably, the plaintiff in the case will post bond with the court, as is the normal practice with replevin actions under s. 78.068, F.S. However, the bill as drafted requires the plaintiff to furnish security directly to the defendant and does not expressly provide for court control over the security and the ultimate distribution of the security to the defendant or its return to a prevailing plaintiff. See *VI. Amendments Or Committee Substitute Changes*.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 8, 2000, the Committee on Judiciary adopted one amendment that is traveling with the bill. The amendment clarifies that, on order of the court, a vexatious litigant shall post security for the payment of the moving defendant's reasonable attorney's fees and costs.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Michael W. Carlson, J.D.

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