

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 154

SPONSOR: Judiciary and Senator Campbell

SUBJECT: Vexatious Litigants

DATE: November 3, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 154 is designated as the Florida Vexatious Litigant Law. The act creates a device to deter repeat filings of frivolous civil lawsuits by litigants who are not represented by attorneys, also known as *pro se* litigants. The act provides that certain *pro se* litigants may not proceed with a civil lawsuit unless the *pro se* litigant furnishes security to cover the defendant's reasonable expenses of litigation, including attorney's fees and taxable costs. The act also provides that a court may enter a prefiling order prohibiting a vexatious litigant from filing a civil action, *pro se*, without first obtaining leave from the administrative judge of that circuit.

According to the act, a vexatious litigant is any person, as defined in section 1.01(3), F.S., who, in the immediately preceding five 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. A vexatious litigant also includes any person or entity previously determined to be a vexatious litigant pursuant to this act.

This bill creates a new, undesignated section of the Florida Statutes.

II. 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 section 57.105, F.S., provides for the recovery of costs and attorney's fees, this sanction is mostly ineffective against *pro se* litigants as they are often collection proof. Accordingly, the threat of a judgment against them for costs and attorney's fees usually does not 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. 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.

A similar statute to that proposed in the bill is section 57.085, F.S. (Supp. 1996). In 1996, the Legislature enacted section 57.085, F.S., to address a perceived problem of frivolous lawsuits filed by indigent prisoner 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 section 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, 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).

Recently, the Business Law Section of the Florida Bar conducted an informal poll of a majority of the Florida circuit courts to determine the perceived need for a vexatious litigant statute. According to the Business Law Section, the concept of restricting repeated, frivolous *pro se* filings was positively received. The Section's informal poll revealed that each of the court clerks contacted identified between one and ten individuals who, in the past five years, had unsuccessfully maintained or prosecuted ten or more civil actions, with the largest number of individuals being found in Dade, Broward and Palm Beach counties.

III. Effect of Proposed Changes:

The Florida Vexatious Litigant Act 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 furnish security to the moving defendant in an amount and within the time as the court deems appropriate.

A vexatious litigant is defined as follows:

1. A person as defined in section 1.01(3), 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 act 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 act’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 \$15,000), the act’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 act also provides that, in addition to any other relief provided by the act, 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 act further provides that, when the aforementioned prefiling order is entered, the clerk of the 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 act 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 section 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.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, Section 21 of the Florida Constitution provides that “[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.” Florida courts construing this provision have recognized that reasonable restraints may be imposed on litigants who abuse the right of access to the courts. In Platel v. Maguire, Voorhis & Wells, P.A., 436 So.2d 303 (Fla. 5th DCA 1983), the court ruled that prohibiting a plaintiff from appearing without an attorney, when that plaintiff had inundated the court with a voluminous amount of frivolous pleadings, did not violate Article I, Section 21 of the Florida Constitution. The restraints imposed by the bill do not appear to violate Article I, Section 21 of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would benefit the targets of vexatious litigants as it would relieve them of the financial burdens of defending meritless lawsuits. However, the precise impact is indeterminate.

C. Government Sector Impact:

Although the precise impact is indeterminate, the bill’s prefiling order provisions could have a fairly sizeable impact on the courts and clerks. The documents filed by vexatious litigants are usually numerous, voluminous and often incomprehensible. Typically, an inordinate amount of time is spent by judges, court staff and clerk staff as vexatious litigants inundate the system with daily filings which have no, or incorrect, case numbers, resulting in the clerks’ offices having to try to sort out which pleadings are intended for which case. See Attwood v. Eighth Circuit Court, Union County, 667 So.2d 356 (Fla. 1st DCA 1995). Accordingly, the impact should be positive for the judicial system as the actions of vexatious litigants will not interfere with the administration of justice for other litigants.

The bill requires the clerks of courts to send copies of all prefiling orders to the Clerk of the Supreme Court, who is required to maintain a registry of all vexatious litigants. The survey conducted by the Business Law Section of the Florida Bar found, at that time, that 30 to 40 individuals would be immediately impacted by the bill’s provisions. Accordingly, this burden on the respective clerks would appear to be relatively minimal.

Finally, the bill requires the courts to conduct hearings to determine whether an individual is a vexatious litigant and, if so, whether the vexatious litigant's claim has merit requiring the posting of adequate security. The burden of conducting such hearings would probably be minimal compared to the benefits of prohibiting vexatious litigants from interfering with the administration of justice for other litigants.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill has an effective date of October 1, 2000, but does not specify whether it applies to pending cases or cases filed after that date. Absent clear legislative intent, substantive statutes will only apply prospectively whereas a procedural or remedial statute will operate retroactively. *See State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 61 (Fla. 1995); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla. 1994). Additionally, statutes that relate only to procedure or remedy generally apply to all pending cases. *See Gupton v. Village Key & Saw Shop, Inc.*, 656 So.2d 475 (Fla. 1995). Substantive laws either create or impose new obligations or duties, or impair or destroy existing rights. *See Alamo*, at 1358. Procedural statutes concern the means and methods to apply and enforce duties and rights. *Id.* Because the bill restrains a litigant's right to access the courts, the bill most likely will be construed to be substantive in nature and, accordingly, operate prospectively to apply to all cases filed on or after October 1, 2000.

VIII. Amendments:

None.