Bill Analysis

Dennis M. Papp *Legislative Service Commission*

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(As Introduced)

Sen. Oelslager

BILL SUMMARY

? Extends the application of the vexatious litigator law to actions commenced in a court of appeals.

? Excludes the Supreme Court and its clerk from the laws pertaining to the collection of filing fees from inmates who file a civil action against a governmental entity or employee and to related duties and restrictions pertaining to such actions.

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CONTENT AND OPERATION

Vexatious litigator action

Introduction

Existing law contains procedures pursuant to which a court of common pleas may declare a person to be a "vexatious litigator" and, as a result of the classification, prohibit the person from subsequently filing or continuing any civil action in the court of claims or in a common pleas, municipal court, or county court. The bill extends this "vexatious litigator" law to also apply to actions in a court of appeals.

Commencement of action

Existing law. Existing law provides that a person, the office of the Attorney General, or a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation who has defended against habitual and persistent "vexatious conduct" (see "***Vexatious litigator law definitions***," below) in the court of claims or in court of common pleas, municipal court, or county court may commence a civil action in a court of common pleas with jurisdiction over the person who allegedly engaged in the habitual and persistent vexatious conduct to have that person declared a "vexatious litigator" (see "***Vexatious litigator law definitions***," below; in the remaining portions of this analysis, an action of this nature is referred to as a "vexatious litigator action"). The specified persons or office may commence this civil action while the civil action or actions in which the habitual and persistent vexatious conduct occurred are still pending or within one year after the termination of the civil action or actions in which the habitual and persistent vexatious conduct occurred. A vexatious litigator action proceeds as any other civil action, and the Ohio Rules of Civil Procedure apply to the action. (R.C. 2323.52(B) and (C).)

Operation of the bill. The bill extends this provision to also permit a person, the office of the Attorney General, or a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation who has defended against habitual and persistent "vexatious conduct" *in a court of appeals* to commence such a vexatious litigator action in a court of common pleas with jurisdiction over the person who allegedly engaged in the habitual and persistent vexatious conduct (R.C. 2323.52(B)).

Entry of vexatious litigator order

Existing law. Existing law provides that, if a vexatious litigator action is filed and if the person alleged to be a vexatious litigator is found to be a vexatious

litigator, subject to the provision described in the next paragraph, the court of common pleas may enter an order prohibiting the vexatious litigator from doing one or more of the following without first obtaining the leave of that court to proceed: (1) instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court, (2) continuing any legal proceedings that the vexatious litigator had instituted in the court of claims or in a court of common pleas, municipal court, or county court prior to the entry of the order, or (3) making any application, other than an application for leave to proceed as described below, in any legal proceedings instituted by the vexatious litigator or another person in the court of claims or in a court of common pleas, municipal court, or county court (in the remaining portions of this analysis, an order of the type described in this paragraph is referred to as a "vexatious litigator order")

If the court of common pleas finds a person who is authorized to practice law in Ohio's courts to be a vexatious litigator and enters a vexatious litigator order in connection with that finding, the order applies to the person only insofar as the person would act, on a *pro se* basis. The order does not apply to the person insofar as the person represents one or more other persons in the person's capacity as a licensed and registered attorney in a civil or criminal action or proceeding or other matter. The provision described in this paragraph does not affect any remedy that is available to a court or an adversely affected party under R.C. 2323.51 or another Revised Code section, under Civil Rule 11 or another provision of the Ohio Rules of Civil Procedure, or under the common law of this state as a result of frivolous conduct or other inappropriate conduct by an attorney who represents one or more clients in connection with a civil or criminal action or proceeding or other matter. (R.C. 2323.52(D).)

A vexatious litigator order remains in force indefinitely unless the order provides for its expiration after a specified period of time (R.C. 2323.52(E)).

Operation of the bill. The bill adds a new restriction that will result from a court's entry of a vexatious litigator order. Under the bill, if a court of common pleas issues such an order, the person who is subject to the order may not institute legal proceedings *in a court of appeals*, continue any legal proceedings that the vexatious litigator had instituted *in a court of appeals* prior to entry of the order, or make any application, other than the application for leave to proceed in a court of appeals allowed by the bill (see "***Leave to proceed***," below), in any legal proceedings instituted by the vexatious litigator or another person *in a court of appeals* without first obtaining leave of the court of appeals to proceed pursuant to the provision enacted by the bill regarding leaves to proceed in a court of appeals enacted by the bill, as described below in "***Leave to proceed***" (R.C. 2323.52(D)(3).)

Leave to proceed

Existing law. Under existing law, a court of common pleas that entered a vexatious litigator order cannot grant a person found to be a vexatious litigator (hereafter vexatious litigator) leave for the institution or continuance of, or the making of an application in, legal proceedings in any court to which the order applies unless the court that entered that order is satisfied that the proceedings or application are not an abuse of process of the court in question and that there are reasonable grounds for the proceedings or application. If the vexatious litigator requests the court that entered a vexatious litigator order to grant the vexation litigator leave to proceed as described in this paragraph, the period of time commencing with the filing of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature is not computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made. (R.C. 2323.52(F).)

During the period of time that the vexatious litigator order is in effect, no appeal by the vexatious litigator lies from a decision by a court of common pleas under the provision described in the preceding paragraph that denies the vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in any court (R.C. 2323.52(G)).

Operation of the bill. The bill enacts new "leave to proceed" provisions regarding the commencement or continuation of proceedings *in a court of appeals* by a vexatious litigator. Under the bill, a vexatious litigator who seeks to institute or continue any legal proceedings *in a court of appeals* or to make an application, other than an application for leave to proceed as described in this paragraph, in any legal proceedings *in a court of appeals* must file an application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are pending. The court of appeals cannot grant a vexatious litigator leave to proceed in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application. If a vexatious litigator requests the court of appeals to grant leave to proceed as described in this paragraph, the period of time commencing with the filing with the court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature is not computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made. (R.C. 2323.52(F)(2).)

During the period of time that the vexatious litigator order is in effect, no appeal by the vexatious litigator lies from a *decision by a court of appeals* under the provision described in the preceding paragraph that denies the vexatious

litigator leave for the institution or continuance of, or the making of an application in, legal proceedings *in a court of appeals* (R.C. 2323.52(G)).

Miscellaneous provisions

Existing law. Existing law specifies that the clerk of the court of common pleas that enters a vexatious litigator order must send a certified copy of the order to the Supreme Court for publication in a manner that the Supreme Court determines is appropriate and that will facilitate the clerk of the court of claims and a clerk of a court of common pleas, municipal court, or county court in refusing to accept pleadings or other papers submitted for filing by vexatious litigators and who have failed to obtain leave to proceed.

Under existing law, whenever it appears by suggestion of the parties or otherwise that a vexatious litigator has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate court of common pleas to do so, the court in which the legal proceedings are pending must dismiss the proceedings or application of the vexatious litigator. (R.C. 2323.53(H) and (I).)

Operation of the bill. The bill modifies these provisions as follows:

(1) It modifies the provision pertaining to the Supreme Court's determination of the manner of publication of vexatious litigator orders to require the Court to determine that the manner chosen will facilitate the clerk of a court of appeals, in addition to the clerk of other courts, in refusing to accept pleadings or other papers submitted for filing by vexatious litigators (R.C. 2323.53(H));

(2) It expands the dismissal proceeding to include a reference to the leave to proceed orders granted by a court of appeals under the bill (R.C. 2323.53(I)).

Vexatious litigator law definitions

Operation of the bill. The bill amends the definition of "vexatious litigator" so that, in addition to the persons included under existing law, it also includes a person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions in the courts of appeals. The bill does not otherwise change the definition, and retains the existing qualified exemption for persons who are authorized to practice law in Ohio's courts under the Ohio Supreme Court Rules for the Government of the Bar of Ohio except in relation to *pro se* representation in a civil action or actions. (R.C. 2323.52(A)(3).)

Existing law. Existing law defines the following terms for purposes of the vexatious litigator law (R.C. 2323.53(A)):

(1) "Conduct" means any of the following: (a) the filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, filing a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action; or (b) the filing by an inmate of a civil action or appeal against a government entity or employee, the assertion of a claim, defense or other position in connection with a civil action of that nature or the assertion of issues of law in an appeal of that nature, or the taking of any other action in connection with a civil action or appeal of that nature (by reference to existing R.C. 2323.51--not in the bill).

(2) "Vexatious conduct" means conduct of a party in a civil action that satisfies any of the following: (a) the conduct obviously serves merely to harass or maliciously injure another party to the civil action, (b) the conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or (c) the conduct is imposed solely for delay.

(3) "Vexatious litigator" means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions. "Vexatious litigator" does not include a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio unless that person is representing or has represented self pro se in the civil action or actions.

Duties of the clerk of the court of common pleas acting as clerk of the court of appeals

Existing law

Existing law provides that the clerk of the court of common pleas in each county also is the clerk of the court of appeals of the county and that, while acting as the clerk of the court of appeals for the county and assuming the duties of that office, the clerk of the court of common pleas generally must collect the same fees that he or she otherwise collects and must perform the same general duties that the clerk otherwise performs (R.C. 2303.03 – not in the bill).

Existing law also provides that the clerk of the court of common pleas, acting as the clerk of the court of appeals for the county, must perform the duties otherwise performed and collect the fees otherwise collected by the clerk of the

court of common pleas, as set forth in the preceding paragraph, and must maintain the files and records of the court (R.C. 2501.16).

Operation of the bill

The bill specifies that the clerk of the court of common pleas, acting as the clerk of the court of appeals for the county, may refuse to accept for filing any pleading or paper submitted for filing by a person who has been found to be a vexatious litigator under the bill and who has failed to obtain leave from the court of appeals to proceed in a court of appeals, as described above in "***Leave to proceed***" (R.C. 2501.16(A)).

Inmate civil actions against a governmental entity or employee

General application of the law

Existing law. Existing law imposes certain duties and restrictions that apply whenever an "inmate" (see below) commences a "civil action or appeal against a government entity or employee" (see below) on or after October 17, 1996. Some of those duties are imposed upon the "clerk" (see below) of the court in which the civil action or appeal against a government entity or employee is commenced (R.C. 2969.22, 2969.23, 2969.24, and 2969.25). The duties and restrictions so imposed are described below in "***General duties and restrictions regarding an inmate civil action against a governmental entity or employee***."

Under existing law, as used in the cited provisions (2969.21):

(1) "Civil action or appeal against a government entity or employee" means any of the following: (a) a civil action that an inmate commences against the state, a political subdivision, or an employee of the state or a political subdivision in a court of common pleas, court of appeals, county court, or municipal court *or in the supreme court*, or (b) an appeal of the judgment or order in a civil action of the type described in clause (a) of this paragraph that an inmate files in a court of appeals *or in the supreme court*. "Civil action or appeal against a governmental entity or employee" *does not include any civil action that an inmate commences* against the state, a political subdivision, or an employee of the state or a political subdivision *in the Court of Claims* or an appeal of the judgment or order entered by the court of claims in a civil action of that nature, that an inmate files in a court of appeals or the Supreme Court.

(2) "Inmate" means a person who is in actual confinement in a state correctional institution or in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse or a releasee who is serving a sanction in a violation sanction center.

(3) "Clerk" means the elected or appointed clerk of any court in this state, *except the Court of Claims*, in which an inmate has commenced a civil action or has filed an appeal of the judgment or order in a civil action of that nature.

Based on the definitions set forth above, the duties and restrictions that existing law imposes whenever an "inmate" commences a "civil action or appeal against a government entity or employee" on or after October 17, 1996, apply in civil actions or proceedings of the specified nature that are commenced in a court of common pleas, court of appeals, county court, or municipal court or in the supreme court, or appeals of judgments or orders in civil of the specified nature rendered by any of those courts that are filed in a court of appeals or in the Supreme Court, but do not include civil actions or proceedings of any nature that are commenced in the Court of Claims, or appeals of judgments or order in civil actions rendered by that Court.

Operation of the bill. The bill modifies the definition of "civil action or appeal against a government entity or employee" to remove all of the following from that definition: (1) *all actions of the specified nature that are commenced in the Supreme Court*, and (2) *all appeals of judgments or orders in civil actions of that nature rendered by any court of common pleas, court of appeals, municipal court, or county court that are filed in the Supreme Court*. It also modifies the definition of "clerk" to specify that that definition *does not include the clerk of the Supreme Court*. (R.C. 2969.21(A) and (B).)

As a result of these changes, the duties and restrictions that existing law imposes whenever an "inmate" commences a "civil action or appeal against a government entity or employee" on or after October 17, 1996, *will not apply* in civil actions or proceedings of the specified nature that are commenced in the Supreme Court and will not apply in appeals of judgments or orders in civil actions of the specified nature rendered by a court of common pleas, court of appeals, municipal court, or county court that are filed in the Supreme Court.

General duties and restrictions regarding an inmate civil action against a governmental entity or employee

Operation of the bill. As stated above, existing law imposes certain duties and restrictions that apply whenever an "inmate" commences a "civil action or appeal against a government entity or employee" on or after October 17, 1996 (R.C. 2969.22, 2969.23, 2969.24, and 2969.25). The bill amends the provisions that impose those duties and restrictions only by removing references that they contain to the Supreme Court or the clerk of the Supreme Court (R.C. 2503.17(C), 2969.22(A)(3) and (D), and 2969.25(B)). These changes conform the provisions that impose those duties and restrictions to the bill's definitional changes described above that remove the Supreme Court and its clerk from the scope of application

of the provisions. A summary of the existing provisions that impose the duties and restrictions whenever an "inmate" commences a "civil action or appeal against a government entity or employee" on or after October 17, 1996, follows.

Filing fee assessment and related provisions – existing law. Existing law provides that, whenever an "inmate" commences a "civil action or appeal against a government entity or employee" on or after October 17, 1996, (hereafter "governmental action") all of the following apply (R.C. 2969.22(A)(1)):

(1) The clerk of the court in which the civil action or appeal is filed must notify the inmate and either the Department of Rehabilitation and Correction (DRC), the sheriff or other administrator of the jail or workhouse, or the administrator of the violation sanction center, whichever has physical custody of the inmate, of the deductions and procedures required by the provisions described below, and must identify in the notice the civil action or appeal by case name, case number, name of each party, and the court in which the civil action or appeal was brought.

(2) The clerk of the court in which the civil action or appeal is filed must charge to the inmate either the total payment of the requisite fees that are described in R.C. 2303.20 or that otherwise are applicable to actions or appeals filed in that court or, if the inmate has submitted an affidavit of indigency, all funds in the inmate account of that inmate in excess of ten dollars, and must notify the inmate of the charge.

(3) Unless the amount charged under (2), above, constitutes the total amount of the requisite fees, all income in the inmate account of the inmate must be forwarded to the clerk of the court during each calendar month following the month in which the inmate filed the civil action or appeal until the total payment of the requisite fees occurs. The first ten dollars in the inmate account of the inmate each month are excluded from that forwarding requirement. If multiple charges are assessed to an inmate account under this provision, charges must be calculated on the basis of the inmate's total income and must be paid as described in this paragraph until the charges exceed 100% of nonexcluded funds in the inmate account; thereafter, all unpaid fees must be paid simultaneously from the inmate account of the inmate to the appropriate court or courts pro rata.

(4) Upon receipt of the notice of the requisite fees payable pursuant to (1) to (3), above, DRC, the sheriff or other administrator of the jail or workhouse, or the administrator of the violation sanction center must deduct from the inmate account of the inmate and transmit to the clerk of the appropriate court the appropriate amounts of the requisite fees as described in (2) and (3), above.

These procedures apply notwithstanding any contrary court rule or the filing of a poverty affidavit. These provisions do not limit the clerk of a court of common pleas, court of appeals, county court, or municipal court *"or the clerk of the Supreme Court"* (removed by the bill) from considering any other inmate resources separate and apart from an inmate account of an inmate in evaluating the inmate's ability to pay court costs, fees, awards, or other amounts. (R.C. 2969.22(A)(2) and (3).) An inmate who commences governmental action is considered to have authorized the above-describe payment (R.C. 2969.22(B)).

If an inmate files a governmental action, upon the termination of the civil action or appeal, the clerk of the court in which the action or appeal was filed must notify DRC, the sheriff or other administrator of the jail or workhouse, or the administrator of the violation sanction center of the outcome of the civil action or appeal and must identify the civil action or appeal by case name, case number, name of each party, and the court in which the civil action or appeal was brought. DRC, the sheriff or other administrator of a jail or workhouse, or the administrator of the violation sanction center must keep in the inmate's file a record of the information so supplied by the clerk. (R.C. 2969.22(C).)

If an inmate is to be released from confinement prior to the total payment of the requisite fees, DRC, the sheriff or other administrator of the jail or workhouse, or the administrator of the violation sanction center, whichever has physical custody of the inmate, must inform the clerk of the court of common pleas, court of appeals, county court, municipal court, *"or Supreme Court"* (removed by the bill) of the release; must deduct from the inmate's account in the month of the inmate's release and transmit to the clerk an amount sufficient to pay the remainder of the requisite fees owed; and if there are insufficient funds in the inmate account to totally pay the requisite fees, must deduct and transmit to the clerk the balance of the account. The clerk must inform the court of the amount of the requisite fees still owed. (R.C. 2969.22(D.)

Clerk charging of filing fees--existing law. If an inmate files a governmental action and is ordered to pay court costs, an award of reasonable attorney's fees, or any other fees or expenses, the clerk of the court must collect the court costs, reasonable attorney's fees, and other fees or expenses from the inmate using the procedures described above (R.C. 2969.23).

Dismissal of inmate's civil action or appeal--existing law. If an inmate files a civil action or appeal against a government entity or employee, the court in which the action or appeal is filed, on its own motion or on the motion of a party, may dismiss the civil action or appeal at any stage in the proceedings if the court finds any of the following: (1) the allegation of indigency in a poverty affidavit filed by the inmate is false, (2) the claim that is the basis of the civil action or the issues of law that are the basis of the appeal are frivolous or malicious, or (3) the

inmate filed an affidavit required by R.C. 2969.25 or 2969.26 that was materially false. (R.C. 2969.24(A)--not in the bill.)

If a party files a motion requesting the dismissal of a civil action or appeal as described above, the court must hold a hearing on the motion. If the court raises the issue of the dismissal of a civil action or appeal as described above by its own motion, the court may hold a hearing on the motion. If practicable, the court may hold the hearing described in this division by telephone or, in the alternative, at the state correctional institution, jail, workhouse, or violation sanction center in which the inmate is confined. On the filing of the motion for, the court may suspend discovery relating to the civil action pending the determination of the motion. (R.C. 2969.24(C) and (D)--not in the bill.)

Filing of civil action or appeal by inmate who previously has filed actions; waiver of filing fees--existing law. At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate must file an affidavit that contains a description of each civil action or appeal of a civil action that the inmate has filed in the previous five years in any state or federal court. The affidavit must include specified information for each of those civil actions or appeals. (R.C. 2969.25(A).)

If an inmate who files a civil action in a court of common pleas, court of appeals, county court, or municipal court *"or in the Supreme Court"* (removed by the bill) or an inmate who files an appeal from a judgment or order in a civil action in any of those courts has filed three or more civil actions or appeals of civil actions in a court of record in Ohio in the preceding 12 months or previously has been subject to the review procedure described in this paragraph, the court may appoint a member of the Bar to review the claim that is the basis of the civil action or the issues of law that are the basis of the appeal and to make a recommendation regarding whether the claim asserted in the action or the issues of law raised in the appeal are frivolous or malicious under any other provision of law. (R.C. 2969.25(B).)

If an inmate who files a civil action or appeal against a government entity or employee seeks a waiver of the prepayment of the full filing fees assessed by the court in which the action or appeal is filed, the inmate must file with the complaint or notice of appeal an affidavit that the inmate is seeking a waiver of the prepayment of the court's full filing fees and an affidavit of indigency. The affidavit of waiver and the affidavit of indigency must contain a statement that sets forth the balance in the inmate account of the inmate for each of the preceding six months, as certified by the institutional cashier, and a statement that sets forth all other cash and things of value owned by the inmate at that time. (R.C. 2969.25(B).)

HISTORY

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