

FIRST REGULAR SESSION

# HOUSE BILL NO. 77

## 99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCGAUGH.

0582H.011

D. ADAM CRUMBLISS, Chief Clerk

### AN ACT

To amend chapter 507, RSMo, by adding thereto five new sections relating to vexatious litigations.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 507, RSMo, is amended by adding thereto five new sections, to be known as sections 507.250, 507.253, 507.256, 507.259, and 507.262, to read as follows:

**507.250. As used in sections 507.250 to 507.262, the following terms shall mean:**

(1) "Litigation", any civil action or proceeding commenced, maintained, or pending in any state or federal court;

(2) "Security", an undertaking to assure payment to the party for whose benefit the undertaking is required to be furnished for the party's reasonable expenses. Reasonable expenses shall include attorneys' fees and shall not be limited to taxable costs incurred in connection with a litigation instituted, caused, or maintained by a vexatious litigant;

(3) "Vexatious litigant", litigant:

(a) Has commenced or maintained at least five litigations, other than in a small claims court, in the immediately preceding seven-year period that have been finally determined adversely to the person or unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing;

(b) Repeatedly relitigates or attempts to relitigate either the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or the cause of action, claim, controversy, or any of the issues of fact or

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 law determined or concluded by the final determination against the same defendant or  
18 defendants as to whom the litigation was finally determined;

19 (c) Repeatedly files unmeritorious motions, pleadings, or other papers; conducts  
20 unnecessary discovery; or engages in other tactics that are frivolous or solely intended to  
21 cause unnecessary delay; or

22 (d) Has previously been declared to be a vexatious litigant by any state or federal  
23 court of record in any action or proceeding based upon the same or substantially similar  
24 facts, transactions, or occurrences.

507.253. 1. In any litigation pending in any court of this state, a defendant may  
2 move the court at any time until final judgment is entered, upon notice and hearing, for an  
3 order requiring the plaintiff to furnish security or for an order dismissing the litigation  
4 under subsection 2 of section 507.256. The motion for an order requiring the plaintiff to  
5 furnish security shall be based upon the ground, and supported by a showing, that the  
6 plaintiff is a vexatious litigant and that there is not a reasonable probability that he or she  
7 will prevail in the litigation against the moving defendant.

8 2. At the hearing upon the motion, the court shall consider any evidence as may be  
9 material to the ground of the motion, both written or oral and by witnesses or affidavit.  
10 Except for an order dismissing the litigation under subsection 2 of section 507.256, no  
11 determination made by the court in determining or ruling upon the motion shall be a  
12 determination of any issue in the litigation.

13 3. If a motion is filed prior to trial under this section, the litigation shall be stayed  
14 and the moving defendant need not plead until ten days after the motion has been denied  
15 or, if the motion is granted, until ten days after he or she has received written notice that  
16 the required security has been furnished.

507.256. 1. Except as provided in subsection 2 of this section, if after hearing the  
2 evidence on the motion the court determines that the plaintiff is a vexatious litigant and  
3 that there is no reasonable probability that the plaintiff will prevail in the litigation against  
4 the moving defendant, the court shall order the plaintiff to furnish security in such amount  
5 and within such time as specified by the court. If security is not furnished as required, the  
6 litigation shall be dismissed in the favor of the defendant.

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

10 3. A defendant may make a motion for relief in the alternative under subdivision  
11 1 or 2 of this section and shall combine all grounds for relief into one motion.

**507.259. 1. In addition to any other relief provided by law, the 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 shall be punished as contempt of court.**

**2. The presiding judge shall 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 as provided under section 507.256.**

**3. 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 under subsection 1 of this section. The filing of the notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff obtains an order from the presiding judge permitting the filing within ten days of the filing of the notice. If the presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect until ten days after the defendants are served with a copy of the order.**

**4. The presiding judge of a court may designate another judge of the same court to act on his or her behalf in exercising the authority and responsibilities established in this section.**

**5. The clerk shall also provide the state courts administrator a copy of any prefiling orders issued under subsection 1 of this section. The state courts administrator shall maintain a record of vexatious litigants subject to those prefiling orders and shall annually disseminate a list of those persons to the clerks of the courts of this state.**

**6. For the purposes of this section, "litigation" also includes any petition, application, or motion other than a discovery motion.**

**7. Nothing in this section shall apply to cases brought under chapters 451 to 455.**

**507.262. 1. A vexatious litigant subject to a prefiling order under section 507.259 may file an application to vacate the prefiling order. The application shall 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 under section 507.259. The application shall be made before the judge that entered the order, or**

6 if that judge is unavailable, then it shall be made before the presiding judge or his or her  
7 designee.

8       2. A vexatious litigant whose application under subsection 1 of this section was  
9 denied shall not be permitted to file another application for one year after the date of the  
10 denial of the previous application.

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

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