

AN ACT

To amend sections 2323.52, 2501.16, 2503.17, 2969.21, 2969.22, and 2969.25 of the Revised Code to extend the application of the vexatious litigator law to actions commenced in a court of appeals and to exclude the Supreme Court from the laws pertaining to collection of fees from inmates filing civil actions against a governmental entity or employee.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2323.52, 2501.16, 2503.17, 2969.21, 2969.22, and 2969.25 of the Revised Code be amended to read as follows:

Sec. 2323.52. (A) As used in this section:

(1) "Conduct" has the same meaning as in section 2323.51 of the Revised Code.

(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.

(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 a court of appeals, 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.

(B) 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 the court of claims or in a court of appeals, 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. The person, office of the attorney general, prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation 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.

(C) A civil action to have a person declared a vexatious litigator shall proceed as any other civil action, and the Ohio Rules of Civil Procedure apply to the action.

(D)(1) If the person alleged to be a vexatious litigator is found to be a vexatious litigator, subject to division (D)(2) of this section, 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:

(a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;

(b) Continuing any legal proceedings that the vexatious litigator had instituted in any of the court of claims or in a court of common pleas, municipal court, or county court courts specified in division (D)(1)(a) of this section prior to the entry of the order;

(c) Making any application, other than an application for leave to proceed under division (F)(1) of this section, in any legal proceedings instituted by the vexatious litigator or another person in any of the court of claims or in a court of common pleas, municipal court, or county court courts specified in division (D)(1)(a) of this section.

(2) If the court of common pleas finds 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 to be a vexatious litigator and enters an order described in division (D)(1) of this section in connection with that finding, the order shall apply to the person only insofar as the person would seek to institute proceedings described in division (D)(1)(a) of this section

on a pro se basis, continue proceedings described in division (D)(1)(b) of this section on a pro se basis, or make an application described in division (D)(1)(c) of this section on a pro se basis. The order shall 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 in a court of common pleas, municipal court, or county court or in the court of claims. Division (D)(2) of this section does not affect any remedy that is available to a court or an adversely affected party under section 2323.51 or another section of the Revised Code, 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 in a court of common pleas, municipal court, or county court or in the court of claims.

(3) A person who is subject to an order entered pursuant to division (D)(1) of this section 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 allowed by division (F)(2) of this section, 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 division (F)(2) of this section.

(E) An order that is entered under division (D)(1) of this section shall remain in force indefinitely unless the order provides for its expiration after a specified period of time.

(F)(1) A court of common pleas that entered an order under division (D)(1) of this section shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court unless the court of common pleas 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 a person who has been found to be a vexatious litigator under this section requests the court of common pleas that entered an order under division (D)(1) of this section to grant the person leave to proceed as described in ~~this~~ division (F)(1) of this section, the period of time commencing with the filing with that 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 shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.

(2) A person who is subject to an order entered pursuant to division (D)(1) of this section and 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 under division (F)(2) of this section, in any legal proceedings in a court of appeals shall 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 shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings 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 person who has been found to be a vexatious litigator under this section requests the court of appeals to grant the person leave to proceed as described in division (F)(2) of this section, 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 shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.

(G) During the period of time that the order entered under division (D)(1) of this section is in force, no appeal by the person who is the subject of that order shall lie from a decision of the court of common pleas or court of appeals under division (F) of this section that denies that person leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court.

(H) The clerk of the court of common pleas that enters an order under division (D)(1) of this section shall 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 appeals, court of common pleas, municipal court, or county court in refusing to accept pleadings or other papers submitted for filing by persons who have been found to be a vexatious litigator under this section and who have failed to obtain leave to proceed under this section.

(I) Whenever it appears by suggestion of the parties or otherwise that a person found to be a vexatious litigator under this section has instituted, continued, or made an application in legal proceedings without obtaining

leave to proceed from the appropriate court of common pleas or court of appeals to do so under division (F) of this section, the court in which the legal proceedings are pending shall dismiss the proceedings or application of the vexatious litigator.

Sec. 2501.16. (A) Each court of appeals may appoint one or more official shorthand reporters, law clerks, secretaries, and any other employees that the court considers necessary for its efficient operation.

The clerk of the court of common pleas, acting as the clerk of the court of appeals for the county, shall perform the duties otherwise performed and collect the fees otherwise collected by the clerk of the court of common pleas, as set forth in section 2303.03 of the Revised Code, and shall maintain the files and records of the court. 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 section 2323.52 of the Revised Code and who has failed to obtain leave from the court of appeals to proceed under that section. The overhead expenses pertaining to the office of the clerk of the court of common pleas that result from the clerk's acting as clerk of the court of appeals for the county, other than wages and salaries, shall be paid from the funds provided under sections 2501.18 and 2501.181 of the Revised Code.

Each officer and employee appointed pursuant to this section shall take an oath of office, serve at the pleasure of the court, and perform any duties that the court directs. Each shorthand reporter shall have the powers that are vested in official shorthand reporters of the court of common pleas under sections 2301.18 to 2301.26 of the Revised Code. Whenever an opinion, per curiam, or report of a case has been prepared in accordance with section 2503.20 of the Revised Code, the official shorthand reporter immediately shall forward one copy of the opinion, per curiam, or report to the reporter of the supreme court, without expense to the reporter.

(B) The court of appeals may determine that, for the efficient operation of the court, additional funds are necessary to acquire and pay for special projects of the court, including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, the employment of magistrates, the training and education of judges, acting judges, and magistrates, community service programs, and other related services. Upon that determination, the court by rule may charge a fee, in addition to all other court costs, on the filing of each case or cause over which the court has jurisdiction.

If the court of appeals offers a special program or service in cases of a specific type, the court by rule may assess an additional charge in a case of that type, over and above court costs, to cover the special program or service. The court shall adjust the special assessment periodically, but not retroactively, so that the amount assessed in those cases does not exceed the actual cost of providing the service or program.

All moneys collected under division (B) of this section shall be paid to the county treasurer of the county selected as the principal seat of that court of appeals for deposit into either a general special projects fund or a fund established for a specific special project. Moneys from a fund of that nature shall be disbursed upon an order of the court in an amount no greater than the actual cost to the court of a project. If a specific fund is terminated because of the discontinuance of a program or service established under division (B) of this section, the court may order that moneys remaining in the fund be transferred to an account established under this division for a similar purpose.

Sec. 2503.17. (A) Except as provided in division (B) and subject to division (C) of this section, the clerk of the supreme court shall charge and collect forty dollars, as a filing fee, for each case entered upon the minute book, including, but not limited to, original actions in the court, appeals filed as of right, and cases certified by the courts of appeals for review on the ground of conflict of decisions; and for each motion to certify the record of a court of appeals or for leave to file a notice of appeal in criminal cases. The filing fees so charged and collected shall be in full for docketing the cases or motions, making dockets from term to term, indexing and entering appearances, issuing process, filing papers, entering rules, motions, orders, continuances, decrees, and judgments, making lists of causes on the regular docket for publication each year, making and certifying orders, decrees, and judgments of the court to other tribunals, and the issuing of mandates. Except as provided in division (B) of this section, the party invoking the action of the court shall pay the filing fee to the clerk before the case or motion is docketed, and it shall be taxed as costs and recovered from the other party if the party invoking the action of the court succeeds, unless the court otherwise directs.

(B)(1) As used in this division, "prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(2) The clerk of the supreme court shall not charge to and collect from a prosecutor the forty-dollar filing fee prescribed by division (A) of this section when all of the following circumstances apply:

(a) In accordance with the Rules of Practice of the Supreme Court of

Ohio, an indigent defendant in a criminal action or proceeding files in the appropriate court of appeals a notice of appeal within thirty days from the date of the entry of the judgment or final order that is the subject of the appeal.

(b) The indigent defendant fails to file or offer for filing in the supreme court within thirty days from the date of the filing of the notice of appeal in the court of appeals, a copy of the notice of appeal supported by a memorandum in support of jurisdiction and other documentation and information as required by the Rules of Practice of the Supreme Court of Ohio.

(c) The prosecutor or a representative of the prosecutor associated with the criminal action or proceeding files a motion to docket and dismiss the appeal of the indigent defendant for lack of prosecution as authorized by the Rules of Practice of the Supreme Court of Ohio.

(d) The prosecutor states in the motion that the forty-dollar filing fee does not accompany the motion because of the applicability of this division, and the clerk of the supreme court determines that this division applies.

~~(C) Under the circumstances described in sections 2969.21 to 2969.27 of the Revised Code, the clerk of the supreme court shall charge the fees and perform the other duties specified in those sections.~~

Sec. 2969.21. As used in sections 2969.21 to 2969.27 of the Revised Code:

(A) "Clerk" means the elected or appointed clerk of any court in this state, except the court of claims or the supreme court, in which an inmate has commenced a civil action against a government entity or employee or has filed an appeal of the judgment or order in a civil action of that nature.

(B)(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~~;

(b) An appeal of the judgment or order in a civil action of the type described in division (B)(1)(a) of this section that an inmate files in a court of appeals ~~or in the supreme court~~.

(2) "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 the supreme court 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.

(C) "Employee" means an officer or employee of the state or of a political subdivision who is acting under color of state law.

(D) "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.

(E) "Inmate account" means an account maintained by the department of rehabilitation and correction under rules adopted by the director of rehabilitation and correction pursuant to section 5120.01 of the Revised Code or a similar account maintained by a sheriff or any other administrator of a jail or workhouse or by the administrator of a violation sanction center.

(F) "Political subdivision" means a county, township, city, or village; the office of an elected officer of a county, township, city, or village; or a department, board, office, commission, agency, institution, or other instrumentality of a county, township, city, or village.

(G) "State" has the same meaning as in section 2743.01 of the Revised Code.

(H) "State correctional institution" has the same meaning as in section 2967.01 of the Revised Code.

(I) "Violation sanction center" means an alternative residential facility that houses releasees who have violated a post-release control sanction or the terms and conditions of parole or of a conditional pardon and that is operated pursuant to section 2967.141 of the Revised Code.

Sec. 2969.22. (A)(1) Whenever an inmate commences a civil action or appeal against a government entity or employee on or after October 17, 1996, all of the following apply:

(a) The clerk of the court in which the civil action or appeal is filed shall notify the inmate and either the department of rehabilitation and correction, 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 divisions (A) to (D) of this section, and shall 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.

(b) The clerk of the court in which the civil action or appeal is filed shall charge to the inmate either the total payment of the requisite fees that are described in section 2303.20 of the Revised Code 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 shall notify the inmate of the charge.

(c) Unless the amount charged under division (A)(1)(b) of this section constitutes the total amount of the requisite fees, all income in the inmate account of the inmate shall 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 shall be excluded from that forwarding requirement. If multiple charges are assessed to an inmate account under this division, charges shall be calculated on the basis of the inmate's total income and shall be paid as described in this division until the charges exceed one hundred per cent of nonexcluded funds in the inmate account; thereafter, all unpaid fees shall be paid simultaneously from the inmate account of the inmate to the appropriate court or courts pro rata.

(d) Upon receipt of the notice of the requisite fees payable pursuant to divisions (A)(1)(a) to (c) of this section, the department, sheriff or other administrator of the jail or workhouse, or the administrator of the violation sanction center shall 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 divisions (A)(1)(b) and (c) of this section.

(2) The procedures described in this section apply notwithstanding any contrary court rule or the filing of a poverty affidavit.

(3) This section does 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~~ 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.

(B) An inmate who commences a civil action or appeal against a governmental entity or employee on or after October 17, 1996, shall be considered to have authorized payment as the plaintiff in the civil action or the appellant in the appeal of the requisite fees that are described in section 2303.20 of the Revised Code or that otherwise are applicable to actions or appeals filed in the court in which the action or appeal is filed, using the procedures set forth in this section, until total payment of the requisite fees.

(C)(1) If an inmate files a civil action or appeal against a government entity or employee on or after October 17, 1996, upon the termination of the civil action or appeal, the clerk of the court in which the action or appeal was filed shall notify the department of rehabilitation and correction, 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 shall 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.

(2) The department of rehabilitation and correction, the sheriff or other administrator of a jail or workhouse, or the administrator of the violation sanction center shall keep in the inmate's file a record of the information supplied by the clerk of the appropriate court under division (C)(1) of this section.

(D) If an inmate is to be released from confinement prior to the total payment of the requisite fees as provided in divisions (A) and (B) of this section, the department of rehabilitation and correction, 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, shall inform the clerk of the court of common pleas, court of appeals, county court, or municipal court, ~~or supreme court~~ of the release. The department, sheriff or other administrator of the jail or workhouse, or administrator of the violation sanction center shall deduct from the inmate account of the inmate in the month of the inmate's release from custody an amount sufficient to pay the remainder of the requisite fees owed and transmit that amount to the clerk. If there are insufficient funds in the inmate account of the inmate to totally pay the requisite fees, the department, sheriff or other administrator of the jail or workhouse, or administrator of the violation sanction center shall deduct the balance of the account and transmit that amount to the clerk. The clerk shall inform the court of the amount of the requisite fees still owed.

Sec. 2969.25. (A) At the time that an inmate commences a civil action or appeal against a government entity or employee, the inmate shall file with the court 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 shall include all of the following for each of those civil actions or appeals:

- (1) A brief description of the nature of the civil action or appeal;
- (2) The case name, case number, and the court in which the civil action or appeal was brought;
- (3) The name of each party to the civil action or appeal;
- (4) The outcome of the civil action or appeal, including whether the court dismissed the civil action or appeal as frivolous or malicious under state or federal law or rule of court, whether the court made an award against the inmate or the inmate's counsel of record for frivolous conduct under section 2323.51 of the Revised Code, another statute, or a rule of court, and, if the court so dismissed the action or appeal or made an award of that nature, the date of the final order affirming the dismissal or award.

(B) 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~~ 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 this state in the preceding twelve months or previously has been subject to the review procedure described in this division, 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 section 2969.24 of the Revised Code, any other provision of law, or rule of court.

(C) 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 shall 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 shall contain all of the following:

(1) 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;

(2) A statement that sets forth all other cash and things of value owned by the inmate at that time.

S. B. No. 168

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SECTION 2. That existing sections 2323.52, 2501.16, 2503.17, 2969.21, 2969.22, and 2969.25 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

S. B. No. 168

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____