

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2382

Introduced by

Senators Sickler, Hogue

Representative Lefor

1 A BILL for an Act to create and enact a new chapter to title 28 of the North Dakota Century
2 Code, relating to vexatious litigation; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 28 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.**

7 As used in this chapter:

- 8 1. "Litigation" means any civil or disciplinary action or proceeding, small claims action,
9 appeal from an administrative agency, review of a referee order by the district court, or
10 appeal to the supreme court. The term does not include criminal actions.
- 11 2. "Vexatious conduct" means conduct that:
- 12 a. Serves primarily to harass or maliciously injure another party in litigation;
- 13 b. Is not warranted under existing law and cannot be supported by a good faith
14 argument for an extension, modification, or reversal of existing law;
- 15 c. Is imposed solely for delay;
- 16 d. Hinders the effective administration of justice;
- 17 e. Imposes an unacceptable burden on judicial personnel and resources; or
- 18 f. Impedes the normal and essential functioning of the judicial process.
- 19 3. "Vexatious litigant" means a litigant, either self-represented or represented by an
20 attorney, who:

- 1 a. Has commenced, prosecuted, or maintained at least two litigations involving
2 vexatious conduct, which were finally determined adversely to the litigant in the
3 past seven years;
- 4 b. After litigation has been finally determined, relitigates or attempts to relitigate:
 - 5 (1) The validity of the determination against the same party as to whom the
6 litigation was finally determined; or
 - 7 (2) The cause of action, claim, controversy, or any of the issues of fact or law,
8 determined or concluded by the final determination against the same party
9 as to whom the litigation was finally determined;
- 10 c. Repeatedly files unmeritorious motions, pleadings, or other papers, conducts
11 unnecessary discovery, or engages in any other tactics frivolous or intended to
12 cause unnecessary burden, expense, or delay; or
- 13 d. Has previously been declared a vexatious litigant by any state or federal court of
14 record in any action or proceeding.

15 **Procedure - Vexatious litigant.**

- 16 1. A presiding judge may designate a vexatious litigant upon motion by the court or at the
17 request of a party.
- 18 2. If the presiding judge finds there is a basis to conclude an individual is a vexatious
19 litigant and determines a prefiling order should be issued, the presiding judge shall
20 issue a proposed prefiling order and proposed findings in support of the order.
- 21 3. An individual determined by the presiding judge to be a vexatious litigant has fourteen
22 days to file a written response to the proposed order.
- 23 4. If a response is filed, the presiding judge may grant a hearing on the proposed order. If
24 no response is filed within fourteen days, or if the presiding judge concludes, following
25 a response or any subsequent hearings, and there is a basis for issuing the order, the
26 presiding judge may issue the prefiling order.

27 **Prefiling order - Contents - Penalty.**

- 28 1. The prefiling order may:
 - 29 a. Prohibit the vexatious litigant from filing any new litigation or any new documents
30 in existing litigation in this state without first obtaining leave of a judge of the court
31 where the litigation is proposed to be filed.

- 1 b. Require the vexatious litigant to furnish security to assure payment of the moving
2 party's reasonable expenses, costs, and attorney fees incurred in a pending
3 action.
- 4 c. Require the vexatious litigant to take any other action reasonably necessary.
- 5 2. A prefiling order must contain an exception to allow the subject of the order to file an
6 application seeking leave to file.
- 7 3. Failure to comply with the terms of a prefiling order may be punished as a contempt of
8 court.
- 9 4. If a vexatious litigant subject to a prefiling order files any new litigation without first
10 obtaining the leave of the court, the court may summarily dismiss the action without
11 notice.

12 **Procedure - New litigation and subsequent filings.**

- 13 1. A vexatious litigant shall file an application for leave to file using the form approved by
14 the state court administrator before filing new litigation or documents into existing
15 litigation.
- 16 2. A court may permit the filing of new litigation or documentation into existing litigation
17 only if it appears the litigation or document has merit and has not been filed for the
18 purpose of harassment or delay.
- 19 3. If the court issues an order granting leave to file a new litigation or a document into
20 existing litigation, a party's time to answer or respond will begin to run when the party
21 is served with the order of the court and a copy of the new litigation or document.
- 22 4. The clerk may not file any litigation presented by the vexatious litigant subject to a
23 prefiling order unless the vexatious litigant first obtains an order permitting the filing. If
24 the clerk mistakenly files the litigation without the order, any party may file a notice
25 stating the plaintiff or complaining party in a disciplinary proceeding is a vexatious
26 litigant subject to a prefiling order. The filing of the notice automatically stays the
27 litigation. The litigation must be dismissed or denied unless the plaintiff or complainant,
28 within ten days of the filing of the notice, obtains an order permitting the litigation to
29 proceed. If a party is served with a new litigation but the action is not filed with the
30 clerk, the party served is not required to respond to the new litigation unless the

1 vexatious litigant obtains an order allowing the litigation to be filed and files and serves
2 the new litigation.

3 5. Upon receiving an application for leave to file, or upon notice from any party named in
4 the litigation, the court shall rule on the application before ruling on the merits of any
5 proposed filing.

6 6. The court may award reasonable attorney's fees and costs to the party filing the notice
7 under subsection 4.

8 7. An order granting leave to file is not required for an application for indigent defense
9 services.

10 **Appeals.**

11 1. A prefiling order entered by a presiding judge designating an individual as a vexatious
12 litigant may be appealed to the supreme court under section 28-27-02 and rule 4 of
13 the North Dakota Rules of Appellate Procedure.

14 2. A prefiling order entered by the supreme court is not appealable.

15 3. An order denying the application for leave to file by a vexatious litigant is not
16 appealable.

17 **Supreme court order.**

18 1. The supreme court may, by motion of the court or of any party to an appeal, enter a
19 prefiling order prohibiting a vexatious litigant from filing any new litigation in the courts
20 of this state as a self-represented party without first obtaining leave of a judge of the
21 court where the litigation is proposed to be filed.

22 2. If the supreme court finds there is a basis to conclude an individual is a vexatious
23 litigant and determines a prefiling order should be issued, the supreme court shall
24 issue a proposed prefiling order and proposed findings in support of the order.

25 3. An individual determined by the supreme court to be a vexatious litigant has fourteen
26 days to file a written response to the proposed order.

27 4. If a response is filed, the supreme court may grant a hearing on the proposed order. If
28 no response is filed within fourteen days, or if the supreme court concludes, following
29 a response or any subsequent hearing there is a basis for issuing the order, the
30 supreme court may issue the prefiling order.

1 **Electronic filing.**

2 A self-represented party who has been declared a vexatious litigant may not file documents
3 electronically and may not be provided a user identification and password to access the state
4 court electronic filing system. A self-represented vexatious litigant shall file all documents in
5 paper format in compliance with all other rules of the court.

6 **Roster.**

7 The clerk of court shall provide a copy of any prefiling orders issued under this chapter to
8 the state court administrator and each United States district court in the state. The state court
9 administrator shall maintain a list of vexatious litigants subject to prefiling orders.

10 **Effect of prefiling order.**

11 A prefiling order entered under this chapter supersedes any other order limiting or enjoining
12 an individual's ability to file or serve papers or pleadings in any North Dakota state court
13 litigation.