

**Introduced by Committee on Judiciary (Senators Evans (Chair),
Blakeslee, Corbett, Harman, and Leno)**

February 18, 2011

An act to amend Sections 391.7, 1141.20, and 1141.23 of, and to add Section 391.8 to, the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

SB 731, as introduced, Committee on Judiciary. Civil actions.

(1) Existing law permits a court, on its own motion or the motion of any party, to enter a prefiling order prohibiting a vexatious litigant from filing any new litigation in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Existing law permits a presiding judge to allow a vexatious litigant's filing only under specified circumstances, and permits the presiding judge to condition the filing upon the furnishing of security. Existing law prohibits a clerk of a court from filing any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order permitting the filing and provides a process for staying and dismissing litigation by a vexatious litigant if the clerk mistakenly accepts it.

This bill would extend the authority described above to a presiding justice or to the designee of a presiding justice or a presiding judge. The bill would also permit a vexatious litigant who is subject to a prefiling order to file an application to vacate the prefiling order and remove his or her name from the Judicial Council's list of vexatious litigants, as specified. The bill would prohibit a vexatious litigant whose application is denied from filing another application before 12 months has elapsed after the date of the denial. The bill would permit a court to vacate a prefiling order and order removal of a vexatious litigant's

name from the Judicial Council's list of vexatious litigants upon a showing of a material change in the facts upon which the order was granted and finding that the ends of justice would be served by vacating the order.

(2) Existing law requires that specified civil cases be submitted to arbitration and that an arbitration award is final unless a request for a de novo trial is filed within 30 days after the date the arbitrator files the award with the court. Existing law requires that an arbitration award be filed in the court in which the action is pending, and if a request for a de novo trial is not made and the award is not vacated, the award be entered in the judgment book.

This bill would further condition the finality of an arbitration award, as described above, on a request for dismissal not having been made, and would extend the period for making a request for dismissal or for a de novo trial to 60 days after the date the arbitrator files the award.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 391.7 of the Code of Civil Procedure is
2 amended to read:

3 391.7. (a) In addition to any other relief provided in this title,
4 the court may, on its own motion or the motion of any party, enter
5 a prefiling order which prohibits a vexatious litigant from filing
6 any new litigation in the courts of this state in propria persona
7 without first obtaining leave of the *presiding justice or* presiding
8 judge, *or his or her designee*, of the court where the litigation is
9 proposed to be filed. Disobedience of the order by a vexatious
10 litigant may be punished as a contempt of court.

11 (b) The *presiding justice or* presiding judge, *or his or her*
12 *designee*, shall permit the filing of that litigation only if it appears
13 that the litigation has merit and has not been filed for the purposes
14 of harassment or delay. The *presiding justice or* presiding judge,
15 *or his or her designee*, may condition the filing of the litigation
16 upon the furnishing of security for the benefit of the defendants
17 as provided in Section 391.3.

18 (c) The clerk may not file any litigation presented by a vexatious
19 litigant subject to a prefiling order unless the vexatious litigant
20 first obtains an order from the *presiding justice or* presiding judge,

1 *or his or her designee*, permitting the filing. If the clerk mistakenly
2 files the litigation without the order, any party may file with the
3 clerk and serve, *or the presiding justice or presiding judge, or his*
4 *or her designee, may direct the clerk to file and serve*, on the
5 plaintiff and other parties a notice stating that the plaintiff is a
6 vexatious litigant subject to a prefiling order as set forth in
7 subdivision (a). The filing of the notice shall automatically stay
8 the litigation. The litigation shall be automatically dismissed unless
9 the plaintiff within 10 days of the filing of that notice obtains an
10 order from the *presiding justice or presiding judge, or his or her*
11 *designee*, permitting the filing of the litigation as set forth in
12 subdivision (b). If the *presiding justice or presiding judge, or his*
13 *or her designee*, issues an order permitting the filing, the stay of
14 the litigation shall remain in effect, and the defendants need not
15 plead, until 10 days after the defendants are served with a copy of
16 the order.

17 (d) For purposes of this section, “litigation” includes any
18 petition, application, or motion other than a discovery motion, in
19 a proceeding under the Family Code or Probate Code, for any
20 order.

21 (e) The clerk of the court shall provide the Judicial Council a
22 copy of any prefiling orders issued pursuant to subdivision (a).
23 The Judicial Council shall maintain a record of vexatious litigants
24 subject to those prefiling orders and shall annually disseminate a
25 list of those persons to the clerks of the courts of this state.

26 SEC. 2. Section 391.8 is added to the Code of Civil Procedure,
27 to read:

28 391.8. (a) A vexatious litigant subject to a prefiling order under
29 Section 391.7 may file an application to vacate the prefiling order
30 and remove his or her name from the Judicial Council’s list of
31 vexatious litigants subject to prefiling orders. The application shall
32 be filed in the court that entered the prefiling order, either in the
33 action in which the prefiling order was entered or in conjunction
34 with a request to the presiding justice or presiding judge to file
35 new litigation under Section 391.7. The application shall be made
36 before the justice or judge who entered the order, if that justice or
37 judge is available. If that justice or judge who entered the order is
38 not available, the application shall be made before the presiding
39 justice or presiding judge, or his or her designee.

1 (b) A vexatious litigant whose application under subdivision
2 (a) was denied shall not be permitted to file another application
3 on or before 12 months has elapsed after the date of the denial of
4 the previous application.

5 (c) A court may vacate a prefiling order and order removal of
6 a vexatious litigant's name from the Judicial Council's list of
7 vexatious litigants subject to prefiling orders upon a showing of a
8 material change in the facts upon which the order was granted and
9 that the ends of justice would be served by vacating the order.

10 SEC. 3. Section 1141.20 of the Code of Civil Procedure is
11 amended to read:

12 1141.20. (a) An arbitration award shall be final unless a request
13 for a de novo trial *or a request for dismissal in the form required*
14 *by the Judicial Council* is filed within ~~30~~ 60 days after the date
15 the arbitrator files the award with the court.

16 (b) Any party may elect to have a de novo trial, by court or jury,
17 both as to law and facts. Such trial shall be calendared, insofar as
18 possible, so that the trial shall be given the same place on the active
19 list as it had prior to arbitration, or shall receive civil priority on
20 the next setting calendar.

21 SEC. 4. Section 1141.23 of the Code of Civil Procedure is
22 amended to read:

23 1141.23. The arbitration award shall be in writing, signed by
24 the arbitrator and filed in the court in which the action is pending.
25 If there is no request for a de novo trial *or a request for dismissal*
26 *in the form required by the Judicial Council* and the award is not
27 vacated, the award shall be entered in the judgment book in the
28 amount of the award. Such award shall have the same force and
29 effect as a judgment in any civil action or proceeding, except that
30 it is not subject to appeal and it may not be attacked or set aside
31 except as provided by Section 473, 1286.2, or Judicial Council
32 rule.