
A BILL FOR AN ACT

RELATING TO ABUSIVE LITIGATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that abusive litigation
2 in the intimate partner violence context is a unique issue that
3 needs to be addressed. Individuals who abuse their intimate
4 partners may also take advantage of court proceedings to
5 control, harass, intimidate, coerce, and impoverish the abused
6 partner, even after a relationship has ended. Abusive
7 litigation arises in a variety of contexts, often in family law
8 cases, and it is not uncommon for abusers to file civil lawsuits
9 against survivors. Even if a lawsuit is meritless, forcing a
10 survivor to spend time, money, and emotional resources
11 responding to the action provides a means for the abuser to
12 assert power and control over the survivor.

13 The legislature further finds that the term "abusive
14 litigation" is the most common term for this issue. Two states,
15 Tennessee and Washington, have already enacted laws to prevent
16 and remedy abusive litigation.



1 for the abuser to assert power and control. The purpose of this
2 chapter is to provide the courts with a process to curb abusive
3 litigation and to mitigate the harms abusive litigation
4 perpetuates. It is the legislature's intent that this chapter
5 be liberally construed to effectuate the goal of protecting
6 survivors of domestic violence from abusive litigation.

7 § -2 **Definitions.** As used in this chapter:

8 "Intimate partner" means:

- 9 (1) Current or former spouses or reciprocal beneficiaries;
10 (2) Persons who have a child in common regardless of
11 whether they have been married or have lived together
12 at any time; or
13 (3) Persons who have or have had a dating relationship as
14 that term is defined in section 586-1.

15 For the purposes of this definition, "intimate" has no romantic
16 connotations.

17 "Litigation" means any civil action or proceeding
18 commenced, maintained, or pending in any state or federal court
19 of record.

20 § -3 **Abusive litigation; defined.** (a) Abusive
21 litigation occurs where the following apply:



- 1 (1) The opposing parties have a current or former intimate
2 partner relationship or have filed on behalf of a
3 minor or incapacitated person who has a current or
4 former intimate partner relationship;
- 5 (2) The party who is filing, initiating, advancing, or
6 continuing the litigation has been found by a court to
7 have committed intimate partner violence against the
8 other party, including by a temporary restraining
9 order or order for protection that the court found was
10 necessary due to domestic violence or the parties had
11 agreed to an order for protection in a case of
12 domestic violence and to the facts of that order,
13 pursuant to:
- 14 (A) An order or decree issued pursuant to section
15 571-46 or 580-74;
- 16 (B) An order for protection issued pursuant to
17 section 586-3;
- 18 (C) A temporary restraining order issued pursuant to
19 section 586-4;
- 20 (D) A protective order issued pursuant to section
21 586-5.5;



- 1 (E) A foreign protective order credited pursuant to
- 2 section 586-21;
- 3 (F) A no contact order issued pursuant to section
- 4 709-906(4); or
- 5 (G) A criminal conviction or a plea of no contest, in
- 6 this State or any other jurisdiction for any of
- 7 the crimes identified in section 709-906,
- 8 711-1106.4, or 711-1106.5; or a filing for any
- 9 offense related to domestic violence;
- 10 (3) The litigation is being filed, initiated, advanced, or
- 11 continued primarily for the purpose of harassing,
- 12 intimidating, or maintaining contact with the other
- 13 party; and
- 14 (4) At least one of the following factors apply:
- 15 (A) Claims, allegations, and other legal contentions
- 16 made in the litigation are not warranted by
- 17 existing law or a good faith argument for the
- 18 extension, modification, or reversal of existing
- 19 law or the establishment of new law;



1 (B) Allegations and other factual contentions made in
2 the litigation are without the existence of
3 evidentiary support; or

4 (C) An issue or issues that are the basis of the
5 litigation have previously been filed in one or
6 more other courts or jurisdictions and the
7 actions have been litigated and disposed of
8 unfavorably to the party filing, initiating,
9 advancing, or continuing the litigation.

10 (b) Litigation is harassing, intimidating, or maintaining
11 contact with the other party when the litigation is filed with
12 the intent or is primarily designed to, among other actions:

13 (1) Exhaust, deplete, impair, or adversely impact the
14 other party's financial resources;

15 (2) Prevent or interfere with the ability of the other
16 party to raise a child or children for whom the other
17 party has sole or joint legal custody;

18 (3) Force, coerce, or attempt to force or coerce the other
19 party to agree to or make adverse concessions
20 concerning financial, custodial, support, or other
21 issues when the issues in question have been



- 1 previously litigated and decided in favor of the other
2 party;
- 3 (4) Force, coerce, or attempt to force or coerce the other
4 party to alter, engage in, or refrain from engaging in
5 conduct when the conduct is lawful;
- 6 (5) Impair, or attempt to impair, the health or well-being
7 of the other party or the other party's dependent;
- 8 (6) Prevent, interfere, or adversely impact the ability of
9 the other party to pursue or maintain a livelihood or
10 lifestyle at the same or better standard as the other
11 party enjoyed before the filing of the action;
- 12 (7) Force, coerce, or attempt to force or coerce the other
13 party to maintain contact with the party who is
14 filing, initiating, advancing, or continuing the
15 litigation; or
- 16 (8) Impair, diminish, or tarnish the other party's
17 reputation in the community or alienate the other
18 party's friends, colleagues, attorneys, or
19 professional associates by, including but not limited
20 to subjecting parties without knowledge of or not
21 reasonably relevant to the litigation to unreasonably



1 or unnecessarily complex, lengthy, or intrusive
2 interrogatories or depositions.

3 § -4 Procedure to request order restricting abusive

4 litigation. (a) A party to a case may request from the court
5 an order restricting abusive litigation if the parties are
6 current or former intimate partners and one party has been found
7 by the court to have committed domestic violence against the
8 other party:

9 (1) In any answer or response to the litigation being
10 filed, initiated, advanced, or continued;

11 (2) By motion made at any time during any open or ongoing
12 case; or

13 (3) By separate motion made under this chapter; provided
14 that for a temporary restraining order or order for
15 protection, the motion shall be made within five years
16 of the entry of the temporary restraining order or
17 order for protection even if the order has since
18 expired.

19 (b) Any court of competent jurisdiction may, on its own
20 motion, determine that a hearing pursuant to this chapter is



1 necessary to determine if a party is engaging in abusive
2 litigation.

3 (c) No filing fee shall be charged to the party requesting
4 an order restricting abusive litigation.

5 (d) This section shall not preclude the party requesting
6 an order restricting abusive litigation from pursuing any other
7 remedy under law or in equity.

8 § -5 **Hearing; procedure.** (a) If a party asserts that
9 they are being subjected to abusive litigation, the court shall
10 attempt to verify that the parties have or previously had an
11 intimate partner relationship and that the party raising the
12 claim of abusive litigation has been found to be a victim of
13 domestic violence by the other party. If the court verifies
14 that both elements are true or is unable to verify that they are
15 not true, the court shall set a hearing to determine whether the
16 litigation meets the definition of abusive litigation.

17 (b) At the time set for the hearing on the alleged abusive
18 litigation action, the court shall hear all relevant testimony
19 and may require any affidavits, documentary evidence, or other
20 records the court deems necessary. The court shall allow the



1 party raising the claim of abusive litigation to attend the
2 hearing remotely if requested by the party.

3 § -6 **Presumptions.** At the hearing conducted pursuant to
4 this chapter, evidence of any of the following creates a
5 rebuttable presumption that litigation is being filed,
6 initiated, advanced, or continued primarily for the purpose of
7 harassing, intimidating, or maintaining contact with the other
8 party:

9 (1) Proffered legal claims are not based on existing law
10 or by a reasonable argument for the extension,
11 modification, or reversal of existing law, or the
12 establishment of new law;

13 (2) Allegations and other factual contentions are made
14 without adequate evidentiary support or are unlikely
15 to have evidentiary support after a reasonable
16 opportunity for further investigation;

17 (3) An issue or issues that are the basis of the
18 litigation have previously been filed in one or more
19 other courts or jurisdictions and the actions have
20 been litigated and disposed of unfavorably to the



1 party filing, initiating, advancing, or continuing the
2 litigation;

3 (4) Within the last ten years, the party allegedly
4 engaging in abusive litigation has been sanctioned by
5 a court of law for filing one or more cases,
6 petitions, motions, or other filings, that were found
7 to have been frivolous, vexatious, intransigent, or
8 brought in bad faith involving the same opposing
9 party; or

10 (5) A court of record in another judicial circuit or
11 jurisdiction has determined that the party allegedly
12 engaging in abusive litigation has previously engaged
13 in abusive litigation or similar conduct and has been
14 subject to a court order imposing prefiling
15 restrictions.

16 § -7 **Court findings.** (a) If the court finds by a
17 preponderance of the evidence that a party is engaging in
18 abusive litigation, and that any or all of the motions or
19 actions pending before the court are abusive litigation, the
20 litigation shall be dismissed, denied, stricken, or resolved by
21 other disposition with prejudice.



1 (b) In addition to dismissal or denial of any pending
2 abusive litigation within the jurisdiction of the court, the
3 court shall enter an order restricting abusive litigation. The
4 order restricting abusive litigation shall:

5 (1) Impose all costs of any abusive litigation action
6 pending in the court at the time of the court's
7 finding pursuant to subsection (a) against the party
8 advancing the abusive litigation;

9 (2) Award the other party reasonable attorneys' fees and
10 costs for responding to the abusive litigation action,
11 including the cost of seeking the order restricting
12 abusive litigation; and

13 (3) Identify the party protected by the order restricting
14 abusive litigation and impose prefiling restrictions
15 upon the party found to have engaged in abusive
16 litigation for a period of no more than seventy-two
17 months; provided that the prefiling restrictions may
18 be extended if the party found to have engaged in
19 abusive litigation, since the effective date of the
20 order, has engaged in further abusive litigation or
21 caused further abuse, including "coercive control",



1 "domestic abuse", "extreme psychological abuse", and
2 "malicious property damage" as those terms are defined
3 in section 586-1.

4 (c) If the court finds by a preponderance of the evidence
5 that the litigation does not constitute abusive litigation, the
6 court shall enter written findings and the litigation shall
7 proceed. Nothing in this chapter shall be construed as limiting
8 the court's inherent authority to control the proceedings and
9 litigants before the court.

10 (d) This section shall not preclude the person who is
11 protected by the order restricting abusive litigation from
12 pursuing any other remedy under law or in equity.

13 § -8 **Filing of new case or motion by person subject to**
14 **an order restricting abusive litigation.** (a) A person subject
15 to an order restricting abusive litigation who wishes to
16 initiate a new case or file a motion in an existing case during
17 the time the person is under filing restrictions shall first
18 file an application or motion before the court that imposed the
19 order restricting abusive litigation to make a request to file.
20 The court may examine witnesses, court records, and any other
21 available evidence to determine if the proposed litigation is



1 abusive litigation or if there are reasonable and legitimate
2 grounds upon which the litigation is based.

3 (b) Based on reviewing the records as well as any evidence
4 submitted as sworn statements from the person who is subject to
5 the order restricting abusive litigation, if the court
6 determines the proposed litigation is abusive litigation, then
7 it is not necessary for the person protected by the order to
8 appear or participate in any way. If the court is unable to
9 determine whether the proposed litigation is abusive litigation
10 without hearing from the person protected by the order, then the
11 court shall issue an order scheduling a hearing and notifying
12 the protected party of the party's right to appear and
13 participate in the hearing. The court order shall specify
14 whether the protected party is expected to submit a written
15 response. The court shall allow the protected party to attend
16 the hearing remotely at the protected party's request.

17 (c) If the court believes the requested filing by the
18 party who is subject to the order restricting abusive litigation
19 will constitute abusive litigation, the request shall be denied,
20 dismissed, or otherwise disposed of with prejudice.



1 (d) If the court reasonably believes that the requested
2 filing by the party who is subject to the order restricting
3 abusive litigation will not be abusive litigation, the court may
4 grant the request and issue an order permitting the filing of
5 the case, motion, or pleading. The court order shall be
6 attached to the front of the pleading to be filed with the
7 clerk. The party who is protected by the order restricting
8 abusive litigation shall be served with a copy of the court
9 order at the same time as the underlying pleading.

10 (e) The findings of the court shall be reduced to writing
11 and made a part of the record in the matter. If the party who
12 is subject to the order restricting abusive litigation disputes
13 the finding of the judge, the party may seek review of the
14 decision as provided by the applicable court rules.

15 (f) If the request to file is granted pursuant to this
16 section, the period of time commencing with the filing of the
17 request to file and ending with the issuance of an order
18 permitting filing shall not be computed as a part of any
19 applicable period of limitations within which the matter must be
20 instituted.



1 (g) After a party who is subject to an order restricting
2 abusive litigation has made a request to file and been granted
3 permission to file or advance a case pursuant to this section,
4 if any court hearing or presiding over the case, or any part
5 thereof, determines that the person is attempting to add
6 parties, amend the complaint, or is otherwise attempting to
7 alter the parties and issues involved in the litigation in a
8 manner that the court reasonably believes would constitute
9 abusive litigation, the court shall stay the proceedings and
10 refer the case back to the court who granted the request to file
11 for further disposition.

12 (h) If a party who is protected by an order restricting
13 abusive litigation is served with a pleading filed by the person
14 who is subject to the order and the pleading does not have an
15 attached order allowing the filing, the protected party may
16 respond by filing a copy of the order restricting abusive
17 litigation.

18 (i) If it is brought to the court's attention that a
19 person who is subject to an order restricting abusive litigation
20 has filed a new case or is continuing an existing case without
21 having been granted a request to file pursuant to this section,



1 the court shall dismiss, deny, or otherwise dispose of the
2 matter on the court's own motion or initiative. The court may
3 take whatever action against the perpetrator of abusive
4 litigation deemed necessary and appropriate for a violation of
5 the order.

6 (j) If a party who is protected by an order restricting
7 abusive litigation is served with a pleading filed by the person
8 who is subject to the order, and the pleading does not have an
9 attached order allowing the pleading, the protected party is
10 under no obligation or duty to respond to the summons,
11 complaint, petition, or motion; answer interrogatories; appear
12 for depositions; or take any other responsive action required by
13 statute or rule in a civil action.

14 (k) If the court who issued the order restricting abusive
15 litigation is otherwise unavailable for any reason, any other
16 court may perform the review required and permitted by this
17 section.

18 (l) For the purposes of this section, "perpetrator of
19 abusive litigation" means a person who files, initiates,
20 advances, or continues litigation in violation of an order
21 restricting abusive litigation."



1 SECTION 3. By January 1, 2025, the courts shall create new
2 forms for the motion for order restricting abusive litigation
3 and develop relevant instructions. By July 1, 2025, the
4 judiciary shall provide training on abusive litigation and this
5 Act to applicable family, district, and circuit court judges.

6 SECTION 4. If any provision of this Act, or the
7 application thereof to any person or circumstance, is held
8 invalid, the invalidity does not affect other provisions or
9 applications of the Act that can be given effect without the
10 invalid provision or application, and to this end the provisions
11 of this Act are severable.

12 SECTION 5. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

15 SECTION 6. This Act shall take effect on January 1, 2025.



Report Title:

Abusive Litigation; Domestic Violence; Judicial Procedures

Description:

Establishes judicial procedures to prevent and remedy abusive litigation. Takes effect 1/1/2025. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

