

JAN 19 2024

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, unless the child was conceived through
13 sexual assault; or
14 (3) Persons who have or have had a dating relationship
15 where both persons are at least thirteen years of age
16 or older.

17 "Litigation" has the same meaning as defined in section
18 634J-1.

19 "Perpetrator of abusive litigation" means a person who
20 files, initiates, advances, or continues litigation in violation
21 of an order restricting abusive litigation.



1 § -3 **Abusive litigation; defined.** (a) Abusive

2 litigation occurs where the following apply:

3 (1) The opposing parties have a current or former intimate
4 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 domestic violence against the other
8 party including by a temporary restraining order or
9 order for protection that the court found was
10 necessary due to domestic violence or has agreed to an
11 order for protection in a case of domestic abuse;

12 (3) The litigation is being initiated, advanced, or
13 continued primarily for the purpose of harassing,
14 intimidating, or maintaining contact with the other
15 party; and

16 (4) At least one of the following factors apply:

17 (A) Claims, allegations, and other legal contentions
18 made in the litigation are not warranted by
19 existing law or a good faith argument for the
20 extension, modification, or reversal of existing
21 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 unless punitive
15 damages are requested and appropriate or a change in
16 the circumstances of the parties provides a good faith
17 basis to seek a change to a financial award, support,
18 or distribution of resources;

19 (2) Prevent or interfere with the ability of the other
20 party to raise a child or children for whom the other
21 party has legal custody in the manner the other party



1 deems appropriate unless the party filing the
2 litigation has a lawful right to interfere and a good
3 faith basis for doing so;

4 (3) Force, coerce, or attempt to force or coerce the other
5 party to agree to or make adverse concessions
6 concerning financial, custodial, support, or other
7 issues when the issues in question have been
8 previously litigated and decided in favor of the other
9 party;

10 (4) Force, coerce, or attempt to force or coerce the other
11 party to alter, engage in, or refrain from engaging in
12 conduct when the conduct is lawful and is conduct in
13 which the other party has the right to engage;

14 (5) Impair, or attempt to impair the health or well-being
15 of the other party or the other party's dependent;

16 (6) Prevent, interfere, or adversely impact the ability of
17 the other party to pursue or maintain a livelihood or
18 lifestyle at the same or better standard as the other
19 party enjoyed prior to the filing of the action
20 primarily for the purpose of harassing or maliciously
21 injuring the civil action defendant;



1 (7) Force, coerce, or attempt to force or coerce the other
2 party to maintain contact with the party who is
3 filing, initiating, advancing, or continuing the
4 litigation; or

5 (8) Impair, diminish, or tarnish the other party's
6 reputation in the community or alienate the other
7 party's friends, colleagues, attorneys, or
8 professional associates by subjecting parties without
9 knowledge of or not reasonably relevant to the
10 litigation to unreasonably or unnecessarily complex,
11 lengthy, or intrusive interrogatories or depositions.

12 § -4 **Procedure to request order restricting abusive**
13 **litigation.** (a) A party to a case may request from the court
14 an order restricting abusive litigation if the parties are
15 current or former intimate partners and one party has been found
16 by the court to have committed domestic violence against the
17 other party:

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

20 (2) By motion made at any time during any open or ongoing
21 case; or



1 (3) By separate motion made under this chapter, within
2 five years of the entry of a temporary restraining
3 order or order for protection even if the order has
4 since expired.

5 (b) Any court of competent jurisdiction may, on its own
6 motion, determine that a hearing pursuant to this act is
7 necessary to determine if a party is engaging in abusive
8 litigation.

9 (c) No filing fee may be charged to the party requesting
10 an order restricting abusive litigation.

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

14 § -5 **Hearing; procedure.** (a) If a party asserts that
15 they are being subjected to abusive litigation, the court shall
16 attempt to verify that the parties have or previously had an
17 intimate partner relationship and that the party raising the
18 claim of abusive litigation has been found to be a victim of
19 domestic violence by the other party. If the court verifies
20 that both elements are true or is unable to verify that they are



1 not true, the court shall set a hearing to determine whether the
2 litigation meets the definition of abusive litigation.

3 (b) At the time set for the hearing on the alleged abusive
4 litigation action, the court shall hear all relevant testimony
5 and may require any affidavits, documentary evidence, or other
6 records the court deems necessary. The court shall allow the
7 protected party to attend the hearing remotely, at the protected
8 party's request.

9 § -6 **Presumptions.** At the hearing conducted pursuant to
10 this chapter, evidence of any of the following creates a
11 rebuttable presumption that litigation is being initiated,
12 advanced, or continued primarily for the purpose of harassing,
13 intimidating, or maintaining contact with the other party:

14 (1) The same or substantially similar issues between the
15 same or substantially similar parties were litigated
16 within the past five years in the same court or any
17 other court of competent jurisdiction;

18 (2) The same or substantially similar issues between the
19 same or substantially similar parties have been
20 raised, pled, or alleged in the past five years and
21 were dismissed on the merits or with prejudice;



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

8 (4) A court of record in another judicial district has
9 determined that the party allegedly engaging in
10 abusive litigation has previously engaged in abusive
11 litigation or similar conduct and has been subject to
12 a court order imposing prefiling restrictions.

13 § -7 **Court findings.** (a) If the court finds by a
14 preponderance of the evidence that a party is engaging in
15 abusive litigation, and that any or all of the motions or
16 actions pending before the court are abusive litigation, the
17 litigation shall be dismissed, denied, stricken, or resolved by
18 other disposition with prejudice.

19 (b) In addition to dismissal or denial of any pending
20 abusive litigation within the jurisdiction of the court, the



1 court shall enter an order restricting abusive litigation. The
2 order restricting abusive litigation shall:

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

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

11 (3) Identify the party protected by the order restricting
12 abusive litigation and impose prefiling restrictions
13 upon the party found to have engaged in abusive
14 litigation for a period of not less than forty-eight
15 months and not more than seventy-two months.

16 (c) If the court finds by a preponderance of the evidence
17 that the litigation does not constitute abusive litigation, the
18 court shall enter written findings and the litigation shall
19 proceed. Nothing in this chapter shall be construed as limiting
20 the court's inherent authority to control the proceedings and
21 litigants before the court.



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

4 § -8 Filing of new case or motion by person subject to
5 an order restricting abusive litigation. (a) A person subject
6 to an order restricting abusive litigation who wishes to
7 initiate a new case or file a motion in an existing case during
8 the time the person is under filing restrictions shall first
9 appear before the court that imposed the order restricting
10 abusive litigation to make a request to file. The court may
11 examine witnesses, court records, and any other available
12 evidence to determine if the proposed litigation is abusive
13 litigation or if there are reasonable and legitimate grounds
14 upon which the litigation is based.

15 (b) Based on reviewing the records as well as any evidence
16 from the person who is subject to the order restricting abusive
17 litigation, if the court determines the proposed litigation is
18 abusive litigation, then it is not necessary for the person
19 protected by the order to appear or participate in any way. If
20 the court is unable to determine whether the proposed litigation
21 is abusive without hearing from the person protected by the



1 order, then the court shall issue an order scheduling a hearing
2 and notifying the protected party of the party's right to appear
3 and participate in the hearing. The court order shall specify
4 whether the protected party is expected to submit a written
5 response. The court shall allow the protected party to attend
6 the hearing remotely at the protected party's request.

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

11 (d) If the court reasonably believes that the requested
12 filing by the party who is subject to the order restricting
13 abusive litigation will not be abusive litigation, the court may
14 grant the request and issue an order permitting the filing of
15 the case, motion, or pleading. The court order shall be
16 attached to the front of the pleading to be filed with the
17 clerk. The party who is protected by the restricting abusive
18 litigation shall be served with a copy of the court order at the
19 same time as the underlying pleading.

20 (e) The findings of the court shall be reduced to writing
21 and made a part of the record in the matter. If the party who



1 is subject to the order restricting abusive litigation disputes
2 the finding of the judge, the party may seek review of the
3 decision as provided by the applicable court rules.

4 (f) If the request to file is granted pursuant to this
5 section, the period of time commencing with the filing of the
6 request to file and ending with the issuance of an order
7 permitting filing shall not be computed as a part of any
8 applicable period of limitations within which the matter must be
9 instituted.

10 (g) After a party who is subject to an order restricting
11 abusive litigation has made a request to file and been granted
12 permission to file or advance a case pursuant to this section,
13 if any court hearing or presiding over the case, or any part
14 thereof, determines that the person is attempting to add
15 parties, amend the complaint, or is otherwise attempting to
16 alter the parties and issues involved in the litigation in a
17 manner that the court reasonably believes would constitute
18 abusive litigation, the court shall stay the proceedings and
19 refer the case back to the court who granted the request to file
20 for further disposition.



1 (h) If a party who is protected by an order restricting
2 abusive litigation is served with a pleading filed by the person
3 who is subject to the order and the pleading does not have an
4 attached order allowing the filing, the protected party may
5 respond by filing a copy of the order restricting abusive
6 litigation.

7 (i) If it is brought to the court's attention that a
8 person who is subject to an order restricting abusive litigation
9 has filed a new case or is continuing an existing case without
10 having been granted a request to file pursuant to this section,
11 the court shall dismiss, deny, or otherwise dispose of the
12 matter on the court's own motion or initiative. The court may
13 take whatever action against the perpetrator of abusive
14 litigation deemed necessary and appropriate for a violation of
15 the order.

16 (j) If a party who is protected by an order restricting
17 abusive litigation is served with a pleading filed by the person
18 who is subject to the order, and the pleading does not have an
19 attached order allowing the pleading, the protected party is
20 under no obligation or duty to respond to the summons,
21 complaint, petition, or motion; answer interrogatories; appear



1 for depositions; or take any other responsive action required by
2 rule or statute in a civil action.

3 (k) If the court who ordered the order restricting abusive
4 litigation is otherwise unavailable for any reason, any other
5 court may perform the review required and permitted by this
6 section."

7 SECTION 3. By September 1, 2024, the courts shall create
8 new forms for the motion for order restricting abusive
9 litigation and develop relevant instructions. By July 1, 2025,
10 the judiciary shall provide training on abusive litigation and
11 this Act to applicable family, district, and circuit court
12 judges.

13 SECTION 4. If any provision of this Act, or the
14 application thereof to any person or circumstance, is held
15 invalid, the invalidity does not affect other provisions or
16 applications of the Act that can be given effect without the
17 invalid provision or application, and to this end the provisions
18 of this Act are severable.

19 SECTION 5. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.



1 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: Kal Rho



S.B. NO. 2085

Report Title:

Domestic Violence; Judicial Procedures; Abusive Litigation

Description:

Establishes judicial procedures to prevent and remedy abusive litigation.

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

