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# 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 The purpose of this Act is to establish judicial procedures  
2 to prevent and remedy abusive litigation.

3 SECTION 2. The Hawaii Revised Statutes is amended by  
4 adding a new chapter to be appropriately designated and to read  
5 as follows:

6 "CHAPTER

7 ABUSIVE LITIGATION

8 § -1 **Purpose and intent.** The legislature finds and  
9 declares that court proceedings can provide a means for domestic  
10 violence abusers to control, harass, intimidate, coerce, and  
11 impoverish their intimate partner during the relationship and  
12 after it has ended. Misused in this way, the legal system  
13 unwittingly becomes another avenue that abusers exploit to cause  
14 psychological, emotional, and financial harm. Abusive  
15 litigation arises in a variety of contexts such as marriage  
16 dissolutions, legal separations, parenting plan actions or  
17 modifications, and protection order proceedings, and it is not  
18 uncommon for abusers to file civil lawsuits against survivors  
19 for defamation, tort, or breach of contract. Even if a lawsuit  
20 is meritless, forcing the partner to spend time, money, and  
21 emotional resources responding to the action provides a means



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, pursuant to:
- 13           (A) An order or decree issued pursuant to section  
14           571-46 or 580-74;
- 15           (B) An order for protection issued pursuant to  
16           section 586-3;
- 17           (C) A temporary restraining order issued pursuant to  
18           section 586-4;
- 19           (D) A protective order issued pursuant to section  
20           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);
- 5 (G) A criminal conviction or a plea of no contendere,
- 6 in this State or any other jurisdiction for any
- 7 of 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 (H) A pending criminal charge, in this State or any
- 11 other jurisdiction, of domestic violence, as a
- 12 result of which a court has imposed criminal
- 13 conditions of release pertaining to the safety of
- 14 the victim; or
- 15 (I) A signed affidavit from a domestic violence or
- 16 sexual assault agency that assists victims of
- 17 domestic violence and sexual assault;
- 18 (3) The litigation is being filed, initiated, advanced, or
- 19 continued primarily for the purpose of harassing,
- 20 intimidating, or maintaining contact with the other
- 21 party; and



- 1           (4) At least one of the following factors apply:
- 2                   (A) Claims, allegations, and other legal contentions
- 3                           made in the litigation are not warranted by
- 4                           existing law or a good faith argument for the
- 5                           extension, modification, or reversal of existing
- 6                           law or the establishment of new law;
- 7                   (B) Allegations and other factual contentions made in
- 8                           the litigation are without the existence of
- 9                           evidentiary support; or
- 10                  (C) An issue or issues that are the basis of the
- 11                           litigation have previously been filed in one or
- 12                           more other courts or jurisdictions and the
- 13                           actions have been litigated and disposed of
- 14                           unfavorably to the party filing, initiating,
- 15                           advancing, or continuing the litigation.
- 16                  (b) Litigation is harassing, intimidating, or maintaining
- 17                   contact with the other party when the litigation is filed with
- 18                   the intent or is primarily designed to, among other actions:
- 19                          (1) Exhaust, deplete, impair, or adversely impact the
- 20                                  other party's financial resources;



- 1           (2) Prevent or interfere with the ability of the other  
2           party to raise a child or children for whom the other  
3           party has sole or joint legal custody;
- 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;
- 13          (5) Impair, or attempt to impair, the health or well-being  
14          of the other party or the other party's dependent;
- 15          (6) Prevent, interfere, or adversely impact the ability of  
16          the other party to pursue or maintain a livelihood or  
17          lifestyle at the same or better standard as the other  
18          party enjoyed before the filing of the action;
- 19          (7) Force, coerce, or attempt to force or coerce the other  
20          party to maintain contact with the party who is



1 filing, initiating, advancing, or continuing the  
2 litigation; or  
3 (8) Impair, diminish, or tarnish the other party's  
4 reputation in the community or alienate the other  
5 party's friends, colleagues, attorneys, or  
6 professional associates by, including but not limited  
7 to subjecting parties without knowledge of or not  
8 reasonably relevant to the litigation to unreasonably  
9 or unnecessarily complex, lengthy, or intrusive  
10 interrogatories or depositions.

11 **§ -4 Procedure to request order restricting abusive**

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

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

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





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

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

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

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

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



1 that both elements are true or is unable to verify that they are  
2 not true, the court shall set a hearing to determine whether the  
3 litigation meets the definition of abusive litigation.

4 (b) At the time set for the hearing on the alleged abusive  
5 litigation action, the court shall hear all relevant testimony  
6 and may require any affidavits, documentary evidence, or other  
7 records the court deems necessary. The court shall allow the  
8 party raising the claim of abusive litigation to attend the  
9 hearing remotely if requested by the party.

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

16 (1) Proffered legal claims are not based on existing law  
17 or by a reasonable argument for the extension,  
18 modification, or reversal of existing law, or the  
19 establishment of new law;

20 (2) Allegations and other factual contentions are made  
21 without adequate evidentiary support or are unlikely



- 1 to have evidentiary support after a reasonable  
2 opportunity for further investigation;
- 3 (3) An issue or issues that are the basis of the  
4 litigation have previously been filed in one or more  
5 other courts or jurisdictions and the actions have  
6 been litigated and disposed of unfavorably to the  
7 party filing, initiating, advancing, or continuing the  
8 litigation;
- 9 (4) Within the last ten years, the party allegedly  
10 engaging in abusive litigation has been sanctioned by  
11 a court of law for filing one or more cases,  
12 petitions, motions, or other filings, that were found  
13 to have been frivolous, vexatious, intransigent, or  
14 brought in bad faith involving the same opposing  
15 party; or
- 16 (5) A court of record in another judicial circuit or  
17 jurisdiction has determined that the party allegedly  
18 engaging in abusive litigation has previously engaged  
19 in abusive litigation or similar conduct and has been  
20 subject to a court order imposing prefiling  
21 restrictions.



1           § -7 **Court findings.** (a) If the court finds by a  
2 preponderance of the evidence that a party is engaging in  
3 abusive litigation, and that any or all of the motions or  
4 actions pending before the court are abusive litigation, the  
5 litigation shall be dismissed, denied, stricken, or resolved by  
6 other disposition with prejudice.

7           (b) In addition to dismissal or denial of any pending  
8 abusive litigation within the jurisdiction of the court, the  
9 court shall enter an order restricting abusive litigation. The  
10 order restricting abusive litigation shall:

- 11           (1) Impose all costs of any abusive litigation action  
12                 pending in the court at the time of the court's  
13                 finding pursuant to subsection (a) against the party  
14                 advancing the abusive litigation;
- 15           (2) Award the other party reasonable attorneys' fees and  
16                 costs for responding to the abusive litigation action,  
17                 including the cost of seeking the order restricting  
18                 abusive litigation; and
- 19           (3) Identify the party protected by the order restricting  
20                 abusive litigation and impose prefiling restrictions  
21                 upon the party found to have engaged in abusive



1 litigation for a period of no more than seventy-two  
2 months; provided that the prefiling restrictions may  
3 be extended if the party found to have engaged in  
4 abusive litigation, since the effective date of the  
5 order, has engaged in further abusive litigation or  
6 caused further abuse, including "coercive control",  
7 "domestic abuse", "extreme psychological abuse", and  
8 "malicious property damage" as those terms are defined  
9 in section 586-1.

10 (c) If the court finds by a preponderance of the evidence  
11 that the litigation does not constitute abusive litigation, the  
12 court shall enter written findings and the litigation shall  
13 proceed. Nothing in this chapter shall be construed as limiting  
14 the court's inherent authority to control the proceedings and  
15 litigants before the court.

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

19 **§ -8 Filing of new case or motion by person subject to**  
20 **an order restricting abusive litigation.** (a) A person subject  
21 to an order restricting abusive litigation who wishes to



1 initiate a new case or file a motion in an existing case during  
2 the time the person is under filing restrictions shall first  
3 file an application or motion before the court that imposed the  
4 order restricting abusive litigation to make a request to file.  
5 The court may examine witnesses, court records, and any other  
6 available evidence to determine if the proposed litigation is  
7 abusive litigation or if there are reasonable and legitimate  
8 grounds upon which the litigation is based.

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



1 response. The court shall allow the protected party to attend  
2 the hearing remotely at the protected party's request.

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

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

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



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

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

18 (h) If a party who is protected by an order restricting  
19 abusive litigation is served with a pleading filed by the person  
20 who is subject to the order and the pleading does not have an  
21 attached order allowing the filing, the protected party may





1 respond by filing a copy of the order restricting abusive  
2 litigation.

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

12 (j) 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 pleading, the protected party is  
16 under no obligation or duty to respond to the summons,  
17 complaint, petition, or motion; answer interrogatories; appear  
18 for depositions; or take any other responsive action required by  
19 statute or rule in a civil action.

20 (k) If the court who issued the order restricting abusive  
21 litigation is otherwise unavailable for any reason, any other



1 court may perform the review required and permitted by this  
2 section.

3 (1) For the purposes of this section, "perpetrator of  
4 abusive litigation" means a person who files, initiates,  
5 advances, or continues litigation in violation of an order  
6 restricting abusive litigation."

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

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

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



1 SECTION 6. This Act shall take effect on January 1, 3000.



**Report Title:**

Abusive Litigation; Domestic Violence; Judicial Procedures

**Description:**

Establishes judicial procedures to prevent and remedy abusive litigation. Effective 1/1/3000. (HD1)

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

