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# A BILL FOR AN ACT

RELATING TO VEXATIOUS LITIGANTS.

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

1           SECTION 1. Section 634J-1, Hawaii Revised Statutes, is  
2 amended as follows:

3           1. By amending the definition of "in propria persona" to  
4 read:

5           ""In propria persona" means [~~on the person's~~] in one's own  
6 behalf [~~acting as plaintiff~~]."

7           2. By amending the definition of "vexatious litigant" to  
8 read:

9           ""Vexatious litigant" means a [~~plaintiff~~] person who does  
10 any of the following:

11           (1) In the immediately preceding seven-year period has  
12 commenced, prosecuted, or maintained in propria  
13 persona at least five civil actions other than in a  
14 small claims court that have been:

15           (A) Finally determined adversely to the [~~plaintiff~~]  
16           person; or



1 (B) Unjustifiably permitted to remain pending at  
2 least two years without having been brought to  
3 trial or hearing;

4 (2) After litigation has been finally resolved against the  
5 ~~[plaintiff,~~ person, relitigates or attempts to  
6 relitigate in propria persona and in bad faith,  
7 either:

8 (A) The validity of the determination against the  
9 same ~~[defendant or defendants]~~ opposing party or  
10 parties as to whom the litigation was finally  
11 determined; or

12 (B) The cause of action, claim, controversy, or any  
13 of the issues of fact or law, determined or  
14 concluded by the final determination against the  
15 same ~~[defendant or defendants]~~ opposing party or  
16 parties as to whom the litigation was finally  
17 determined;

18 (3) In any litigation while acting in propria persona,  
19 files, in bad faith, unmeritorious motions, pleadings,  
20 or other papers, conducts unnecessary discovery, or  
21 engages in other tactics that are frivolous or solely  
22 intended to cause unnecessary delay; or



1 (4) Has previously been declared to be a vexatious  
 2 litigant by any state or federal court of record in  
 3 any action or proceeding based upon the same or  
 4 substantially similar facts, transaction, or  
 5 occurrence."

6 3. By repealing the definition of "defendant".

7 [~~"Defendant" means a person (including a corporation,  
 8 association, partnership, firm, or governmental entity) against  
 9 whom litigation is brought or maintained, or sought to be  
 10 brought or maintained."~~]

11 4. By repealing the definition of "plaintiff".

12 [~~"Plaintiff" means the person who commences, institutes or  
 13 maintains litigation or causes it to be commenced, instituted,  
 14 or maintained, including an attorney at law acting on the  
 15 attorney's own behalf."~~]

16 SECTION 2. Section 634J-2, Hawaii Revised Statutes, is  
 17 amended to read as follows:

18 "[~~§~~634J-2] **Motion for order requiring [plaintiff]**  
 19 **party to post security.** In any litigation pending in any court  
 20 of this State, at any time until final judgment is entered, a  
 21 [~~defendant~~] party may move the court, upon notice and hearing,  
 22 for an order requiring the [~~plaintiff~~] opposing party to furnish



1 security. The motion must be based upon the ground, and  
2 supported by a showing, that the [plaintiff] opposing party is a  
3 vexatious litigant and that there is no reasonable probability  
4 that the [plaintiff] opposing party will prevail in the  
5 litigation against the moving [~~defendant.~~] party."

6 SECTION 3. Chapter 634J, Hawaii Revised Statutes, is  
7 amended as follows:

8 1. By amending section 634J-4 to read:

9 "[+]§634J-4[+] **Finding; amount of security.** If, after  
10 hearing the evidence upon the motion, the court determines that  
11 the [plaintiff] respondent is a vexatious litigant and that  
12 there is no reasonable probability that the [plaintiff]  
13 respondent will prevail in the litigation against the [~~moving~~  
14 ~~defendant,~~] movant, the court shall order the [plaintiff]  
15 respondent to furnish, for the benefit of the [~~moving~~  
16 ~~defendant,~~] movant, security in an amount and within a time as  
17 the court shall fix."

18 2. By amending section 634J-5 to read:

19 "[+]§634J-5[+] **Dismissal on failure to post security.**  
20 When security that has been ordered is not furnished, the  
21 litigation shall be dismissed with prejudice as to the  
22 [~~defendant~~] movant for whose benefit it was ordered."



1           3. By amending section 634J-6 to read:

2           "~~§~~634J-6~~§~~ **Motion as stay of proceedings.** When a  
3 motion pursuant to section 634J-2 is filed prior to trial, the  
4 litigation is stayed, and the ~~[moving defendant]~~ movant need not  
5 plead until ten days after the motion shall have been denied, or  
6 if granted, until ten days after the required security has been  
7 furnished and the ~~[moving defendant]~~ movant has been given  
8 written notice. When a motion pursuant to section 634J-2 is  
9 made at any time thereafter, the litigation shall be stayed for  
10 such period after the denial of the motion or the furnishing of  
11 the required security as the court shall determine."

12           4. By amending subsections (b) and (c) of section 634J-7  
13 to read:

14           "(b) The presiding judge shall permit the filing of  
15 litigation only if it appears~~[, after hearing,]~~ that the  
16 litigation has merit and has not been filed for the purposes of  
17 harassment or delay. The presiding judge may condition the  
18 filing of the litigation upon the furnishing of security for the  
19 benefit of the ~~[defendants]~~ vexatious litigant's opposing party  
20 or parties, as provided in section 634J-4.

21           (c) The clerk shall not file any litigation presented by a  
22 vexatious litigant subject to a prefiling order unless the



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

18 SECTION 4. Statutory material to be repealed is bracketed  
 19 and stricken. New statutory material is underscored.

20 SECTION 5. This Act shall take effect upon its approval.

21

INTRODUCED BY: Calvin K. Y. Song  
 BY REQUEST



HB2491

**Report Title:**

Vexatious Litigants

**Description:**

Expands scope of vexatious litigants law to prohibit and sanction the vexatious conduct of all parties.

