

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 individuals who
2 abuse their intimate partners have been known to misuse court
3 proceedings to control, harass, intimidate, coerce, or
4 impoverish the abused partner. This abuse of the litigation
5 process occurs in a variety of contexts. In family court,
6 abusers have used cases involving dissolution, legal separation,
7 parenting-plan action or modification, a protection order, or
8 child custody to harm or exploit their partner and children's
9 well-being. Abusers have also filed meritless civil lawsuits
10 alleging breach of contract, defamation, or another tort to
11 force the abused partner to spend time, money, and emotional
12 resources responding to the lawsuit. Due to the lengthy nature
13 of legal proceedings, litigation abuse can extend long after the
14 relationship has ended.

15 The legislature further finds that courts have considerable
16 authority to respond to abusive litigation tactics while
17 upholding litigants' constitutional right to access the courts.



1 Because the courts have inherent authority to control the
2 conduct of litigants, they have considerable discretion to
3 fashion creative remedies in order to curb abusive litigation.
4 The legislature intends to provide the courts with an additional
5 tool to curb abusive litigation and to mitigate the harms
6 perpetrated by abusive litigation.

7 Therefore, the purpose of this Act is to:

- 8 (1) Prohibit abusive litigation by a party who has been
9 found by a court to have abused, stalked, or sexually
10 assaulted the other party;
- 11 (2) Allow a court to dismiss a case or complaint upon a
12 finding, based upon a preponderance of the evidence,
13 that the primary purpose of the litigation is to
14 abuse, harass, intimidate, or threaten the other
15 party, or to maintain contact with the other party;
16 and
- 17 (3) Allow a court to impose sanctions against a person
18 found to be using abusive litigation, including
19 awarding monetary amounts to the other party that were
20 incurred in defending against the abusive litigation.



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

4 "CHAPTER

5 ABUSIVE LITIGATION

6 § -1 **Definitions.** As used in this chapter:

7 "Abusive litigation" means litigation in which the
8 following apply:

9 (1) The opposing parties have a current or former
10 relationship as a family or household member or there
11 has been a civil order or criminal conviction
12 determining that one of the parties stalked or
13 sexually assaulted the other party;

14 (2) The party who is filing, initiating, advancing, or
15 continuing the litigation has been found by a court to
16 have abused, stalked, or sexually assaulted the other
17 party pursuant to:

18 (A) An order for protection issued pursuant to
19 section 586-3;

20 (B) A temporary restraining order issued pursuant to
21 section 586-4;



- 1 (C) A protective order issued pursuant to section
- 2 586-5.5;
- 3 (D) A no contact order pursuant to section 709-
- 4 906(4);
- 5 (E) A foreign protective order issued pursuant to
- 6 section 586-21;
- 7 (F) An order or decree issued pursuant to section
- 8 571-46 or section 580-74;
- 9 (G) A criminal conviction or a plea of nolo
- 10 contendere, in this State or any other
- 11 jurisdiction for any of the crimes identified in
- 12 section 709-906 or section 711-1106.5, or a
- 13 filing for any offense related to domestic
- 14 violence offense;
- 15 (H) A pending criminal charge, in this State or any
- 16 other jurisdiction, of domestic violence, as a
- 17 result of which a court has imposed criminal
- 18 conditions of release pertaining to the safety of
- 19 the victim; or
- 20 (I) A signed affidavit from a domestic violence or
- 21 sexual assault advocate or counselor working on



1 behalf of an agency that assists victims of
2 domestic violence and sexual assault; and

3 (3) The primary purpose of the litigation is found to be
4 the abuse, harassment, intimidation, or threatening of
5 the other party, or to maintain contact with the other
6 party.

7 "Domestic violence" shall have the same meaning as in
8 section 321-471.

9 "Family or household member" shall have the same meaning as
10 section 586-1.

11 "Foreign protective order" means any order described by
12 section 586-21.

13 "Litigation" means any kind of legal action or proceeding,
14 including but not limited to:

15 (1) A filing of a summons, complaint, or petition;

16 (2) Serving a summons, complaint, or petition, regardless
17 of whether it has been filed;

18 (3) Filing a motion, notice of court date, or order to
19 appear;



1 (4) Serving a motion, notice of court date, or order to
2 appear, regardless of whether it has been filed or
3 scheduled;

4 (5) Filing a subpoena, subpoena duces tecum,
5 interrogatories, request for production of documents,
6 notice of deposition, or other discovery request; or

7 (6) Serving a subpoena, subpoena duces tecum,
8 interrogatories, request for production of documents,
9 notice of deposition, or other discovery request.

10 "Perpetrator of abusive litigation" means a person who
11 files, initiates, advances, or continues litigation in violation
12 of an order restricting abusive litigation.

13 "Protected party" means the party who requested and was
14 granted an order finding and restricting abusive litigation.

15 **§ -2 Finding of abusive litigation and order restricting**
16 **abusive litigation.** (a) A party may request the court to issue
17 an order finding the opposing party has engaged in abusive
18 litigation and restricting the abusive litigation. In the
19 request, the requesting party shall demonstrate that:

20 (1) The opposing party has a current or former
21 relationship as a family or household member with the



1 requesting party or there has been a civil order or
2 criminal conviction determining that the opposing
3 stalked or sexually assaulted the requesting party;
4 and

5 (2) The opposing party who is filing, initiating,
6 advancing, or continuing the litigation has been found
7 by a court to have abused, stalked, or sexually
8 assaulted the requesting party pursuant to:

9 (A) An order for protection issued pursuant to
10 section 586-3;

11 (B) A temporary restraining order issued pursuant to
12 section 586-4;

13 (C) A protective order issued pursuant to section
14 586-5.5;

15 (D) A no contact order pursuant to section 709-
16 906(4);

17 (E) A foreign protective order issued pursuant to
18 section 586-21;

19 (F) An order or decree issued pursuant to section
20 571-46 or section 580-74;



1 (G) A criminal conviction or a plea of nolo
2 contendere, in this State or any other
3 jurisdiction for any of the crimes identified in
4 section 709-906 or section 711-1106.5, or a
5 filing for any offense related to domestic
6 violence offense;

7 (H) A pending criminal charge, in this State or any
8 other jurisdiction, of domestic violence, as a
9 result of which a court has imposed criminal
10 conditions of release pertaining to the safety of
11 the victim; or

12 (I) A signed affidavit from a domestic violence or
13 sexual assault advocate or counselor working on
14 behalf of an agency that assists victims of
15 domestic violence and sexual assault.

16 (b) A party may request an order finding and restricting
17 abusive litigation:

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;



1 (3) In an answer or response to any motion or request for
2 an order;

3 (4) Orally in any hearing; or

4 (5) By petition.

5 (c) In the event that no formal complaint, motion,
6 petition, or other pleading has been filed, the intermediate
7 court of appeals shall have jurisdiction to hear the request and
8 issue an order restricting abusive litigation.

9 (d) In the event that the litigation alleged to be abusive
10 is filed in the family court, the family court may hear a
11 request for an order restricting abusive litigation.

12 (e) In the event that the litigation alleged to be abusive
13 is filed in the district court, the district court may hear a
14 request for an order restricting abusive litigation.

15 (f) In the event that the litigation alleged to be abusive
16 is filed in the circuit court, the circuit court may hear a
17 request for an order restricting abusive litigation.

18 (g) Upon the request of a party for an order finding and
19 restricting abusive litigation, the applicable court shall hold
20 a hearing pursuant to section -3.



1 (h) The court administrator of the applicable court shall
2 create:

3 (1) Forms for a petition or motion for an order
4 restricting abusive litigation; and

5 (2) The form for an order restricting abusive litigation.
6 The forms shall be maintained by the clerk of the applicable
7 court.

8 (i) No filing fee shall be charged to the responding party
9 for proceedings pursuant to this section.

10 § -3 **Hearing; procedure.** (a) At the hearing before the
11 court pursuant to this chapter, evidence of any of the following
12 shall create a rebuttable presumption that the litigation is
13 being filed, initiated, advanced, or continued primarily for the
14 purpose of harassing, intimidating, threatening, or maintaining
15 contact with the other party and is therefore abusive
16 litigation:

17 (1) The same or substantially similar issues between the
18 same or substantially similar parties have been
19 litigated within the past five years in the same court
20 or any other court of competent jurisdiction;



- 1 (2) The same or substantially similar issues between the
2 same or substantially similar parties have been
3 raised, pled, or alleged in the past five years and
4 were decided on the merits or dismissed;
- 5 (3) Within the last five years, the party allegedly
6 engaging in abusive litigation has been sanctioned by
7 any court for filing one or more cases, petitions,
8 motions, or other filings that were found to have been
9 frivolous, vexatious, intransigent, or brought in bad
10 faith involving the same opposing party;
- 11 (4) A court 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 (5) 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 (6) 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; or
3 (7) 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 **Burden of proof; procedure; order restricting**

10 **abusive litigation; sanctions.** (a) Pursuant to section -3,
11 if the court finds by a preponderance of the evidence that a
12 party is engaging in abusive litigation and that any or all of
13 the motions or actions pending before the court constitute
14 abusive litigation, the litigation may be dismissed, denied,
15 stricken, or otherwise disposed of with prejudice.

16 (b) Upon a finding of abusive litigation and after
17 providing the parties an opportunity to be heard, the court may
18 enter an order restricting abusive litigation that shall include
19 conditions deemed necessary and appropriate, including:

20 (1) Awarding the protected party reasonable attorney's
21 fees and the costs of responding to the abusive



1 litigation, including the cost of seeking the order
2 restricting abusive litigation;

3 (2) Awarding the protected party all costs of the abusive
4 litigation, including but not limited to court costs;
5 lost wages; transportation costs, including traveling
6 to court to review files or pleadings; and childcare
7 costs incurred as a result of defending against the
8 abusive litigation;

9 (3) Identifying the protected party and imposing filing
10 restrictions upon the party found to have engaged in
11 abusive litigation that pertains to any future
12 litigation against the protected party or the
13 protected party's dependents; and

14 (4) Any other relief deemed necessary and appropriate by
15 the court.

16 (c) If, pursuant to section -3, the court finds that
17 the litigation does not constitute abusive litigation, the court
18 shall enter written findings and the litigation shall proceed.

19 (d) Nothing in this section shall be construed to limit
20 the court's inherent authority to control the proceedings and
21 litigants before it.



1 (e) The provisions of this section are nonexclusive and
2 shall not affect any other remedy available under the law.

3 § -5 **Filing of a new case; advancing or continuing**
4 **abusive litigation; restrictions.** (a) Except as otherwise
5 provided in this section, a person who is subject to an order
6 restricting abusive litigation shall be prohibited from filing
7 or initiating new litigation and from advancing or continuing
8 the abusive litigation against the protected party for the
9 period of time that the restrictions are in effect.

10 (b) A person against whom filing restrictions have been
11 ordered and who wishes to initiate a new case against the
12 protected party or file a motion in an existing case against the
13 protected party during the period of time that the filing
14 restrictions are in effect shall make an application to the
15 court. Upon the filing of an application, the court shall issue
16 an order scheduling a hearing to determine whether the proposed
17 litigation or motion in an existing case constitutes abusive
18 litigation or if there are reasonable and legitimate grounds
19 upon which the proposed litigation or motion is based.

20 (c) The scheduling order shall notify the protected party
21 of the party's right to appear or participate in the hearing.



1 The order shall specify that if the protected party declines to
2 appear or participate in the hearing, the protected party is
3 required to submit a written response. When possible, the
4 protected party shall be permitted to appear remotely.

5 (d) Following the hearing, if the court determines that
6 the proposed litigation or motion that a person against whom
7 filing restrictions have been ordered is making application to
8 file constitutes abusive litigation, the application shall be
9 denied, dismissed, or otherwise disposed of with prejudice.

10 (e) If the court determines that the proposed litigation
11 or motion does not constitute abusive litigation, the court
12 shall grant the application and issue an order permitting the
13 filing of the proposed litigation or motion. The order shall be
14 attached to the front of the pleading to be filed with the
15 clerk. The protected party shall be served with a copy of the
16 order at the same time as the underlying pleading.

17 (f) The court shall make findings and issue a written
18 order supporting the court's ruling.

19 (g) If the application is granted pursuant to this
20 section, the period of time commencing with the filing of the
21 application and ending with the issuance of an order permitting



1 the filing shall not be computed as part of any applicable
2 period of limitations within which the matter shall be
3 instituted.

4 (h) If a protected party is served with a pleading filed
5 by the person against whom filing restrictions have been
6 ordered, and the pleading does not have an attached order
7 allowing the pleading, the protected party may respond to the
8 pleading by filing a copy of the order restricting abusive
9 litigation and shall be under no obligation or duty to respond
10 to the pleading; answer interrogatories or any other discovery
11 request; or appear for depositions or any other responsive
12 action required by rule or statute in a civil action.

13 (i) If it is brought to the attention of the court that a
14 person against whom pre-filing restrictions have been ordered has
15 filed a new case or is continuing an existing case without
16 having been granted permission pursuant to this section, the
17 court shall dismiss, deny, or otherwise dispose of the matter.
18 The court may take whatever action against the perpetrator of
19 abusive litigation that the court deems necessary and
20 appropriate for a violation of the order restricting abusive
21 litigation."



1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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S.B. NO. 2604

Report Title:

Abusive Litigation

Description:

Establishes a court's authority to issue an order restricting 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.

